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Regulations

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 17—REGULATIONS OF THE BOARD OF LEGAL EXAMINERS

The regulations of the Board of Legal Examiners are revised and amended as follows:

Sec.

- 17.1 Appointments.
- 17.2 Position of law clerk trainee.
- 17.3 Promotion, transfer and reassignment.
- 17.4 War service transfer.
- 17.5 Reinstatement.
- 17.6 Registers of eligibles.
- 17.7 Register applicants entering military service.

AUTHORITY: §§ 17.1 to 17.7, inclusive, issued under E.O. 8743, 6 F.R. 2117, as amended by E.O. 9230, 7 F.R. 6665; 54 Stat. 1211, 5 U.S.C. 631 (a), 681.

§ 17.1 Appointments. (a) If a person whose appointment to an attorney position was authorized by the Board prior to March 16, 1942, subject to later non-competitive examination, fails to pass the examination, his appointment shall terminate within 30 days after notification by the Board to the department or agency in which he is employed, except that in cases of special emergency he may be retained, without acquiring civil service status, for such longer period as the Board, in its discretion, deems necessary. A person whose appointment was authorized prior to March 16, 1942 and who passes a non-competitive examination acquires a classified civil service status six months from the date of his appointment, if there has been compliance with the provisions of Section 2.6 of this chapter, other than those provisions relating to recommendation and examination.

(b) Except as provided in paragraph (g) of this section, no person may be appointed to an attorney position unless he has passed a non-competitive examination prescribed by the Board or has his name listed on an attorney register applicable to the position to which he is

appointed. The non-competitive examination will be given only to a person whose proposed appointment has been submitted to the Board by an appointing officer.

(c) The following qualifications will be required:

(1) *For appointment to Grade CAF-4.* Graduation from a recognized law school as defined by the Commission, to wit, a law school authorized to confer the Bachelor or higher degree in law, which requires residence work. No person shall be eligible for appointment to this position who has failed a bar examination since his graduation from law school and who has not subsequently passed such an examination, or who has, except for good cause shown, failed to take a bar examination within one year of graduation from law school.

(2) *For appointment to Grade P-1 and higher.* Admission to the bar and the following professional experience or its equivalent: P-1, none; P-2, one year; P-3, eighteen months; above P-3, three years. In judging the equivalent of professional experience, special qualifications may be taken into consideration.

(d) Non-competitive examinations shall be conducted by or under the supervision of examining committees of three members to be appointed by the Chairman of the Board or pursuant to his direction and such committees shall determine the eligibility or ineligibility of the candidate. The determination shall be based upon (1) the record and experience of the candidate and (2) an oral examination. The oral examination may be waived in the case of appointments above P-5 and in the case of any war service appointment, if the examining committee is satisfied, without regard thereto, that the candidate is eligible.

(e) The determination of the examining committee in non-competitive examinations shall be final, except that within fifteen days after notification of failure an unsuccessful candidate may petition the Board to review the determination. Such review is discretionary and will be granted only for good cause shown.

(f) Examinations shall be directed to determining whether the candidate pos-

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seses the competence requisite for the professional grade generally rather than for any particular position within the grade.

Notwithstanding the foregoing provision a person employed in a position other than an attorney position may be approved for an attorney position in the same agency in a grade not higher than P-3 provided (1) that he meets the minimum requirements prescribed in paragraph (c) of this section; (2) that his assignment will be limited to work which calls primarily for knowledge of the particular agency; (3) that his experience in the agency especially qualifies him for the type of work for which he is proposed; and (4) that the examining committee is satisfied of his ability to perform competently the type of work to which he will be assigned. Persons thus approved for particular positions shall be eligible to acquire qualified Civil Service status as attorneys. Persons who acquire or who are approved for qualified Civil Service status as attorneys may not be reassigned to a different type of work or transferred to another agency without first passing such competitive or non-competitive tests as the Board may prescribe. Promotion to any grade above P-3 shall *per se* be deemed reassignment for the purpose of this section.

(g) All appointments to attorney and law clerk-trainee positions shall be for the duration of the present war and for six months thereafter, unless otherwise specifically limited to a shorter period, and shall be made subject to the satisfactory completion of a trial period of one year. Such appointments shall be effected under Executive Order No. 9063 of February 16, 1942, (7 F.R. 1075), and persons thus appointed will not thereby acquire a classified Civil Service status. No person shall be appointed unless (1) he has qualified by passing an appropriate examination prescribed by the Board or, (2) in case of special emergency, the Board has authorized his appointment subject to subsequent examination. Such appointments shall in other respects be governed by the requirements and procedures prescribed by these Regulations. This paragraph shall become effective March 16, 1942.

§ 17.2 *Position of law clerk trainee.* Pursuant to the definite recommendation contained in Plan A of the Report of the President's Committee on Civil Service Improvement, the Board recom-

mends the immediate establishment of a general position classification consisting of non-professional law clerk duties, preparatory in character for professional legal work. The position should have a designation indicating its training or preparatory character. Government departments and agencies having legal staffs should, wherever possible, include such positions in their legal organizations, as a means of recruiting able law school students. Since these appointments are to permit preparation for professional legal work, they shall be made with an expressly stipulated condition that the appointee prior to entrance upon duty shall have obtained a law degree and shall obtain membership in the bar of a State or Territory, or the District of Columbia, within a period of 18 months from his appointment. Failure to meet this condition should result in his separation, or assignment to other duties. Upon acquiring bar membership, the appointee should be immediately eligible for assignment as Junior Attorney.

§ 17.3 Promotion, transfer and reassignment. (a) A person who has civil service status as an attorney may be transferred or reassigned without examination to an attorney position within the grades in which he has such status. Subject to a non-competitive examination approved by the Board, he may be promoted, transferred, or reassigned to a position in a higher grade.

(b) Except as provided in paragraph (c) of this section, the incumbent of any attorney position included within the Civil Service who has neither civil service status as an attorney nor eligibility for such status acquired through recommendation under the terms of an executive order or statute may not be promoted, transferred, or reassigned to any other position in the Civil Service. Such incumbents, if they have not failed a non-competitive examination occasioned by a recommendation that they be granted civil service status, may receive war service appointments under § 17.1 (g) of this chapter to positions not covered by an existing attorney register and to positions covered by such a register if it can be established by affirmative proof that failure to recommend them for civil service status when they were eligible to be so recommended was caused by lack of information or erroneous information concerning civil service requirements.

(c) Subject to the provisions of these regulations, a person who receives a war service appointment under § 17.1 (g) of this chapter may be promoted, transferred, or assigned to other positions for the duration of his appointment.

(d) The minimum qualifications required for new appointments by § 17.1 (c) of this chapter shall apply to promotions and transfers with increase in grade. *Provided, however,* That with the

prior approval of the Board of Legal Examiners the incumbent of an attorney position whose work is certified by the Chief Law Officer of the employing agency to be of unusually high quality may without reference to the foregoing limitations be advanced to a position in the same agency in the next higher grade.

§ 17.4 War service transfer. (a) On and after March 16, 1942 all transfers from one attorney position to another such position shall be governed by § 18.9 of this chapter, except that the determinations required thereunder shall be made by the Board of Legal Examiners.

(b) Incumbents of attorney positions who desire to transfer under the War Service Regulations shall file with the Board of Legal Examiners a statement to that effect, accompanied by Form 3821 ("Application for Attorney Positions") unless this form has previously been filed with the Board.

§ 17.5 Reinstatement. (a) A person who has civil service status as an attorney and who is separated from a civilian position in the Federal service after serving a probationary period in an attorney position may, upon passing a non-competitive examination when required by the Board, be reinstated to an attorney position provided request is made by an appointing officer within 1 year of separation if the period of service was less than 2 years, within 2 years if the period of service was 2 years or more but less than 3 years, within 3 years if the period of service was 3 years or more but less than 4 years, within 4 years if the period of service was 4 years or more but less than 5 years, or at any time if the period of service was 5 years or more or if the former employee is entitled to military preference in appointment or was retired upon annuity under the Civil Service Retirement Act because of total disability and is eligible for reinstatement by reason of recovery, or if the reinstatement is for war service tenure.

(b) A person separated from an attorney position during his probationary period may be reinstated subject to the other provisions of these regulations; but if the separation was by reason of voluntary resignation prior to the completion of six months of satisfactory service, he may be reinstated only in the same agency. Reinstatement under this section will be subject to the completion of the original probationary period if in the agency from which the employee was separated or if the separation occurred after six months of satisfactory service; in other cases it will be subject to the satisfactory completion of a new probationary period.

(c) Subject to non-competitive examination when required by the Board but without regard to any other provisions of this section, an attorney may be retransferred to an attorney position in which he was formerly employed or to

any position to which transfer could be made therefrom, if since his transfer from the attorney position he has served continuously and satisfactorily (1) in the executive or judicial civil service of the United States or of its insular possessions; (2) in the legislative service; (3) in the service of a state, county, municipality, or foreign government in a position in which he has acquired valuable training and experience; or (4) in a training course approved by the Board in an educational institution of recognized standing.

(d) Subject to non-competitive examination when required by the Board, a person who receives a war service appointment to an attorney position under § 17.1 (g) of this chapter and who is separated therefrom, may be reinstated to an attorney position with war service tenure.

§ 17.6 Registers of eligibles. Registers of eligibles for attorney positions shall contain such numbers, be applicable to such positions, and be effective for such periods as the Board shall determine and announce. The publication of each register and of the supplements thereto shall constitute the certification of the eligibles included. The register, together with pertinent information concerning the eligibles which the Board will supply, shall be available in full to appointing officers, who may make selections for appointment from among those included, subject to the Board's stated minimum experience requirements for particular grades of positions and with the exception that the Board may from time to time suspend the certification of eligibles from particular States in order to give effect to the principle that appointments shall so far as practicable be distributed among the States in proportion to population. Except as to individuals of whom the Board is advised by appointing officers in advance of publication of the register, all appointments to the positions and for the period covered by any register shall be from the register. The selections from any register shall be communicated immediately by the appointing agencies to the Board. The Board, immediately upon entering its approval of proposed appointments, will remove the names of the appointees from the register. The Board may from time to time add to a register others who have qualified through examination, in substitution for those who have been found unavailable for appointment, and may at any time suspend or cancel the eligibility of an individual included upon register for cause arising either before or after his original certification. In case the life of a register is extended, the eligibles remaining upon it may as a condition of continued eligibility be required to furnish supplementary statements of qualifications and experience.

§ 17.7 Register applicants entering military service. Applicants for the Board's register who enter the military and related services or who are drafted into national service under the Selective Service Act shall enjoy the following rights, provided request is made within six months following their honorable discharge and return to civilian status:

(a) An applicant whose score upon a written examination confers eligibility for oral examination and who enters the service before his oral examination shall be entitled to take a qualifying oral examination or at the option of the Board to compete in a competitive oral examination in process at the time of his request and, if recommended by the examining committee, to be included for one year among the eligibles for positions in the grade or grades for which the original written examination was given.

(b) An applicant who enters the service after having qualified for a register but before the register is announced shall not be placed upon the register but shall be included for one year following action upon his request among the eligibles for positions in the grade or grades covered by the register for which he had qualified.

(c) An eligible upon a register who enters the service during the life of the register shall be included among the eligibles for positions in the same grade or grades for one year following action upon his request.

The foregoing rights shall accrue regardless of the tenure and status attaching to appointments during the periods within which eligibility is conferred pursuant to this section.

By the United States Civil Service Commission.

[SEAL] H. B. MITCHELL,
President.

APRIL 19, 1943.

[F. R. Doc. 43-6150; Filed, April 20, 1943;
11:00 a. m.]

TITLE 7—AGRICULTURE

Chapter XI—Food Distribution Administration

[FDO 6-2]

PART 1405—FRUITS AND VEGETABLES

CITRUS FRUIT

Determination relative to oranges and lemons fit for human consumption or for processing into juice.

Pursuant to the authority vested in me by Food Distribution Order No. 6 (8 F.R. 511) issued by the Secretary of Agriculture of the United States on January 12, 1943, under the authority of Executive Order No. 9280, dated December 5, 1942, and in order to effectuate the purposes of such orders, *It is hereby determined and ordered*, As follows:

§ 1405.5 Oranges and lemons fit for human consumption or for processing into juice—(a) Definitions. When used in this order, unless otherwise distinctly expressed or manifestly incompatible with the intent thereof:

(1) The term "mature" means oranges which have soluble solids, as determined by a Brix scale hydrometer, equal to or in excess of 8 parts to every part of acid contained in the juice, and the acidity of the juice is to be calculated as citric acid without water of crystallization. The sample selected for testing maturity shall be a composite sample of the lot of oranges except where it is evident that immature oranges are mixed throughout the entire lot, in which case a separate maturity test shall be made of the fruit having an immature appearance.

(2) The term "damage by dryness" means oranges in which 20 percent or more of the exposed pulp on a transverse cut through the center shows dryness or desiccation.

(b) *Oranges.* Any lot of oranges produced in California or Arizona is fit for human consumption or for processing into juice if such oranges meet the following minimum grade specifications: The oranges are mature, free from decay, free from damage by dryness, and free from other defects making the juice unsatisfactory for canning. A tolerance shall be allowed, with respect to damage by dryness, of 15 percent; and an additional tolerance shall be allowed, of 10 percent, for other defects making the juice unsatisfactory for canning, but not over one-half of said tolerance of 10 percent shall be allowed for decay.

(c) *Lemons.* Any lot of lemons produced in California or Arizona is fit for human consumption or for processing into juice if such lemons (1) meet the minimum quality requirements specified in the Agricultural Code of California, as revised effective September 13, 1941; (2) are free from serious damage caused by bud mite; and (3) are colored to the extent that 75 percent or more of the surface of each lemon is of a full yellow color. A tolerance of 5 percent shall be allowed for serious damage caused by bud mite, but this tolerance shall be included in the tolerance for defects other than serious freezing damage as provided in the Agricultural Code of California, as revised effective September 13, 1941. An additional tolerance of 5 percent shall be allowed for lemons which do not meet the aforesaid color requirement, but such tolerance shall be in addition to the other tolerances permitted under the aforesaid Agricultural Code of California, as revised effective September 13, 1941.

(d) *Effective date.* The provisions hereof shall become effective at 12:01 a. m., P. w. t., April 22, 1943.

(E.O. 9280, 7 F.R. 10179; F.D.O. 6, 8 F.R. 511)

Issued this 20th day of April 1943.

[SEAL] Roy F. HENDRICKSON,
Director of Food Distribution.

[F. R. Doc. 43-6152; Filed, April 20, 1943;
11:09 a. m.]

TITLE 10—ARMY: WAR DEPARTMENT

Chapter VIII—Procurement and Disposal of Equipment and Supplies

PART 81—PROCUREMENT OF MILITARY SUPPLIES AND ANIMALS

MISCELLANEOUS AMENDMENTS

The following amendments and additions to the regulations contained in Part 81 and Part 83 are hereby prescribed. These regulations are also contained in War Department procurement regulations dated September 5, 1942 (7 F.R. 8082), as amended by Changes No. 14, March 26, 1943.¹ In section numbers the figures to the right of the decimal point correspond with the respective paragraph numbers in the procurement regulations.

General Instructions

Section 81.105 is rescinded as follows:

§ 81.105 Contents. [Rescinded]

General Purchase Policies

Sections 81.201 to 81.208, inclusive, are rescinded and the following §§ 81.201 to 81.294, are substituted therefor.

GENERAL

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- 81.201 Rescission of regulations.
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¹ For previous changes see 7 F.R. 8163, 9268, 9680, 10184, 10247, 10640, 10906; 8 F.R. 401, 411, 2531, 3339, 3486, and 3752.

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GENERAL PURCHASE POLICIES

GENERAL

§ 81.201 Rescission of regulations. Army Regulations 5-140, May 22, 1940, as amended; Army Regulations 5-160, October 24, 1941, as amended; Army Regulations 5-240, February 11, 1936, as amended; and all other prior directives and instructions of whatsoever nature relating to negotiated purchases, open market purchases, procurement without advertising, and other purchasing methods are hereby rescinded.

§ 81.202 Compliance with Procurement Regulation No. 2. Unless otherwise specifically provided, compliance with any provision of Procurement Regulation No. 2¹ or of any amendment thereto which requires a change in contract procedure or in any contract provision shall not be mandatory until thirty days after the issuance of such regulation or amendment.

§ 81.203 Definitions. (a) The term "negotiation" as used in these procurement regulations includes any method of contracting or purchasing, except the formal advertising and sealed bid procedure prescribed by section 3709, Revised Statutes.

¹ Procurement Regulation No. 2 includes §§ 81.201 to 81.294, inclusive.

(b) The term "negotiated purchases" includes all purchases made by negotiation as so defined. (See § 81.241).

§ 81.204 Contracting authority—(a) *Basis.* War Department contracting and purchasing are now based primarily on the authority contained in the Act of December 18, 1941 (Public No. 354, 77th Congress) referred to as the First War Powers Act, 1941, and Executive Order No. 9001, December 27, 1941. The earlier authority contained in sections 1 (a) and (b) of the Act of July 2, 1940 (Public No. 703, 76th Congress) has also been extended, however, by section 9 of the Act of June 30, 1941 (Public No. 139, 77th Congress) and by section 13 of the Act of June 5, 1942 (Public No. 580, 77th Congress). (See § 81.240).

(b) *First War Powers Act.* Title II of the First War Powers Act, 1941, reads as follows:

SEC. 201. The President may authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort, in accordance with regulations prescribed by the President for the protection of the interests of the Government, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made and to make advance, progress and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts whenever he deems such action would facilitate the prosecution of the war: *Provided*, That nothing herein shall be construed to authorize the use of the cost-plus-a-percentage-of-cost system of contracting: *Provided further*, That nothing herein shall be construed to authorize any contracts in violation of existing law relating to limitation of profits: *Provided further*, That all acts under the authority of this section shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be incompatible with the public interest.

(c) *Authority conferred.* Title I of Executive Order No. 9001 confers authority on the War Department under the First War Powers Act, 1941, as follows:

(1) Section 1 of the Executive Order authorizes the Secretary of War

within the limits of the amounts appropriated therefor, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance, progress, and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts.

and to delegate these powers with authority to redelegate them. With respect to such delegations, see § 81.107 and following of these procurement regulations, and especially § 81.107 (i).

2. The contracts hereby authorized to be made include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of things and services necessary, appropriate or convenient for the prosecu-

tion of war, or for the invention, development, or production of, or research concerning any such things, including but not limited to, aircraft, buildings, vessels, arms, armament, equipment, or supplies of any kind, or any portion thereof, including plans, spare parts and equipment therefor, materials, supplies, facilities, utilities, machinery, machine tools, and any other equipment, without any restriction of any kind, either as to type, character, location or form.

3. The War Department, the Navy Department, and the United States Maritime Commission may by agreement modify or amend or settle claims under contracts heretofore or hereafter made, may make advance, progress and other payments upon such contracts of any percentum of the contract price, and may enter into agreements with contractors and/or obligors, modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under surety or other bonds, whenever, in the judgment of the War Department, the Navy Department, or the United States Maritime Commission respectively the prosecution of the war is thereby facilitated. Amendments and modifications of contracts may be with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished hereunder, irrespective of the time or circumstances of the making of or the form of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract, or the amendments or modifications thereof.

4. Advertising, competitive bidding, and bid, payment, performance, or other bonds or other forms of security, need not be required.

(See §§ 81.401-81.427.)

(d) *Restrictions on powers.* (1) Title II of Executive Order No. 9001 prescribes the following regulations for the exercise of the authority thereby conferred.

1. Complete data shall be maintained by the War Department, the Navy Department, and the United States Maritime Commission as to all contracts and purchases which they respectively make pursuant to the Act and this Executive Order. The Secretary of War, the Secretary of the Navy, and the Chairman of the United States Maritime Commission shall make available for public inspection, as they may respectively deem compatible with the public interest, so much of such data as does not cover restricted, confidential, or secret contracts or purchases.

As amended by E.O. 9296, January 30, 1943. See §§ 81.291-81.294.

2. Notwithstanding anything in the Act or Executive Order, the War Department, the Navy Department, and the United States Maritime Commission shall not discriminate in any act performed thereunder against any person on the ground of race, creed, color or national origin, and all contracts shall be deemed to incorporate by reference a provision that the contractor and any subcontractors thereunder shall not so discriminate.

(See § 81.325.)

3. No claim against the United States arising under any purchase or contract made under the authority of the Act shall be assigned except in accordance with the Assignment of Claims Act, 1940 (Public No. 811, 76th Congress, approved October 9, 1940).

(See § 81.3180.)

4. Advance payments shall be made hereunder only after careful scrutiny to determine that such payments will promote the national interest and under such regulations to that end as the Secretary of War, the Secretary of the Navy, or the United States Maritime Commission may prescribe.

(See § 81.321.)

(2) Every contract entered into pursuant to the Act and Executive Order must contain the warranty by the contractor against payment of commissions and contingent fees set out in § 81.323 (see § 81.1107).

(3) The cost-plus-a-percentage-of-cost system of contracting shall not be used.

(4) Provisions of law limiting profits under contracts or fixed-fees continue in effect and in no case shall the fixed fee under a cost-plus-a-fixed-fee contract exceed 7% of the estimated cost exclusive of the fee.

(5) No contract or modification or amendment thereof shall be exempt from the provisions of the Walsh-Healey Act (49 Stat. 2036) because of being entered into without advertising or competitive bidding, and the provisions of that act, the Davis-Bacon Act, as amended (49 Stat. 1011), the Copeland Act, as amended (48 Stat. 948) and the Eight Hour Law, as amended by the Act of September 9, 1940 (Public No. 781, 76th Congress) if otherwise applicable apply to contracts made and performed under the authority of the Act and Executive Order. (See §§ 81.901-81.985.)

(e) *Extent of authority.* By an opinion dated August 29, 1942, the Attorney General of the United States has construed the powers conferred by the First War Powers Act, 1941, and Executive Order No. 9001. This opinion ruled that a proposed delegation of authority from the Under Secretary of War to the Commanding General, Army Service Forces, substantially similar to the delegation contained in § 81.107 (e) was within the authority of the Act and Executive Order.

§ 81.205 *Purpose of regulations.* In conferring the powers under the First War Powers Act, Executive Order No. 9001 directed the war agencies to work with the War Production Board "to bring about the conversion of manufacturing industries to war production, including the surveying of the war potential of industries, plant by plant; the spreading of war orders; the conversion of facilities; the assurance of efficient and speedy production; the development and use of subcontracting to the fullest extent and conservation of strategic materials." The policies and procedures designed to carry out these procurement objectives are stated in this and the following regulations. This regulation discusses the basic principles underlying the policies and methods elaborated in the subse-

quent regulations, and the relation of these various policies to the procurement program as a whole.

CONTRACT PLACEMENT

§ 81.220 *Scope.* (a) Attainment of the essential procurement objectives with the minimum disruption of the nation's economic system, and effective use of available labor, materials and facilities, depend to a large extent on sound contract placement. This section states the policies to be followed and the factors to be considered in placing contracts, in selecting contractors, in scheduling deliveries and in revising delivery schedules.

(b) Further policies governing placement of contracts for plant facilities expansion are treated in §§ 81.1001-81.1019. Policies governing purchasing through other services and other departments are discussed in §§ 81.601-81.613 and foreign purchases are treated in §§ 81.501-81.510.

§ 81.221 *Purchase of used or second-hand materials.*—(a) *Policy.* In view of the prevalent shortages of raw materials, manufacturing facilities and labor, second-hand or used articles will be procured instead of new articles whenever (1) they are suitable in quality and design for the particular purpose involved, and (2) they can be obtained at reasonable cost with reasonable effort at the time required, unless any agency allocating such articles (such as the Machine Tool Section of the Resources and Production Division) orders otherwise.

(b) *Execution.* The chief of each supply service will make adequate provision to insure that all procurement offices and agencies under his direction comply with the policy stated in paragraph (a) of this section, and will place responsibility upon a designated member of his staff for requiring compliance with that policy to the greatest extent practicable.

(c) *Obstacles.* Whenever a statute, order or regulation prevents the effective procurement of suitable used articles or other articles already available instead of new articles, the chief of the supply service concerned will notify the Director, Purchases Division, Headquarters, Army Service Forces, of this fact so that appropriate action may be taken pursuant to the First War Powers Act, 1941 and Executive Order 9001, or otherwise, to remove any obstruction to such procurement.

(d) *Purchases through Procurement Division, Treasury Department.* In connection with the use of used or second hand materials, it is of the utmost importance that all procurement offices and agencies avail themselves of the facilities of the Procurement Division, Treasury Department as more fully set forth in § 81.613. That division makes available to the War Department property which is surplus to the need of other Govern-

ment agencies. Chiefs of supply services should see that all procurement offices and agencies under their direction obtain the catalog of available property referred to in § 81.613 (f), and that they keep in touch with the Regional Property Officers of the Procurement Division referred to in § 81.613 (e). In this way much used and second-hand material can be obtained.

§ 81.222 *Time for placing contracts and scheduling deliveries.*—(a) *Scheduling of deliveries.* Proper scheduling of deliveries is essential for the most efficient use of available industrial capacity. If manufacturers are required to produce and deliver items long before they will actually be needed, they may be forced to increase the number of their employees abnormally or be unable to produce other items which will be needed sooner, and scarce materials may be tied up in inventory not currently needed. Thus the failure to schedule deliveries properly tends to disrupt the Army supply program and prevents industrial capacity from being used in the production of items as they are needed. Accordingly, subject to directives of the Director of Production Scheduling, future contracts will be scheduled so that supplies will be delivered only a short time before they are actually required, unless in a particular case efficient production requires otherwise. Existing contracts will also be reviewed with a view to rescheduling deliveries on the same basis.

(b) *Time for placing contracts.* The policy of deferring production and deliveries until supplies are needed does not mean that the placing of contracts for such items should be postponed. Frequently, prompt placing of contracts for supplies to be delivered in the future will assist the contractor to plan his entire production, to obtain necessary allocations of materials and to employ his labor in a more orderly, efficient and continuous manner. This insures the maximum use of facilities and avoids waste and delay. Under the Controlled Materials Plan it is particularly important for contractors to know well in advance the amounts of such materials which will be required for particular periods. Accordingly, contracts for future needs will be promptly placed wherever such early placement is feasible and will promote more efficient or orderly production.

§ 81.223 *Factors governing placement of contracts.* The selection of a contractor for a particular contract from among the available qualified producers depends on a number of factors. In making such selections effect must be given to various policies laid down by the War Production Board (see Directive No. 2, October 10, 1942, 7 F.R. 8179), by the War Manpower Commission in its directives, and by Congress, as in the Smaller War Plants Act. These policies,

their relation and relative importance are discussed in the following paragraphs:

(a) *Ability to perform.* Primary emphasis shall be placed upon securing performance or deliveries at the time, in the quantity, and of the quality required by the war program. In addition an effort should be made to have for each item of supply and equipment at least two producers so located as not to be subject to the same hazard.

(b) *New facilities.* When two or more producers are able to perform the contract equally well, but will require substantially different amounts of additional new machinery, equipment, or facilities for the performance of the contract, it shall be placed with the concern which needs to acquire the least. When the Smaller War Plants Corporation decides to obtain machinery, equipment or facilities in order to qualify a smaller war plant, however, the amount of this equipment will be disregarded in applying this policy and the concern will be treated as if such equipment had been on hand.

(c) *Labor supply policy.* (1) The War Manpower Commission has divided the country into twelve Regions and from time to time classifies localities in each Region according to their labor supply conditions and on this basis designates them as:

Group I: Areas of current acute labor shortage.

Group II: Areas of labor stringency and those anticipating a labor shortage within six months.

Group III: Areas in which a general labor shortage may be anticipated after six months.

Group IV: Areas in which labor supply is and will continue to be adequate to meet all known labor requirements.

The Industrial Personnel Division, Headquarters, Army Service Forces, will advise the supply services monthly, or more often if conditions warrant, of the designations of the Commission.

(2) When two or more contractors are able to perform a contract equally well, and are substantially on a par with respect to new equipment and facilities, the selection between them shall be based on the labor supply situation in the areas in which they are located, in accordance with paragraphs (d) and (e) of this section.

(d) *Labor shortage areas.* In accordance with paragraph (c) of this section the following policies will be observed with respect to the placing of contracts in Groups I, II, or III labor areas:

(1) *Group I:* It is the intent to avoid so far as possible the placement of contracts in Group I areas. The only contracts which may be placed there are those (i) for which established special facilities exist and for which labor has been specially trained; or (ii) on which the required speed of deliveries cannot otherwise be met; or (iii) which, in the

considered judgment of the chief of the supply service concerned or of any person or persons to whom he may delegate his authority, it is impracticable to place elsewhere.

(2) *Group II:* In these areas there may be placed any contract for the continuation of the production of items of the same character as those already being produced by the contractor for any government department, if no labor is required in addition to that currently employed by such contractor. In addition, any contract may be placed in a Group II area which is of such character that it might properly be placed in a Group I area under the provisions of subparagraph (1).

(3) *Group III:* In these areas there may be placed any contract (whether representing new or continuation business) which can be completed within six months and which will not require the employment of labor in addition to that normally or currently employed by the contractor. In addition, any contract may be placed in a Group III area which is of such character that it might properly be placed in a Group I or II area under the provisions of subparagraphs (1) and (2).

(4) *Exceptions.* The restrictions stated in this paragraph do not apply to the placing of contracts—

(i) With firms which either normally or currently employ less than 100 wage earners and will not employ more than their normal number of wage earners or more than 100 wage earners (whichever is less) during the performance of the contract; or

(ii) With firms which are recommended as prime contractors or subcontractors by the Smaller War Plants Division, War Production Board; or

(iii) With originating manufacturers for newly developed articles in accordance with § 81.224.

(e) *Labor surplus areas; Group IV labor areas.* There are no restrictions from the standpoint of labor supply upon the placement of contracts in Group IV or unclassified areas. Furthermore, the policy of the War Department is to distribute its business so as to utilize as widely as practicable the facilities of concerns located in Group IV, unclassified and Group III areas.

(f) *Spreading contracts.* When the policies stated in paragraphs (a) to (e) of this section and § 81.224 have been met, contracts will be placed so as to spread production among as many firms as is reasonable and feasible. In carrying out this policy, consideration will be given in each instance to the following objectives:

(1) *Small business.* To give as large a proportion of the business as possible to qualified small plants in accordance with the procedure prescribed under § 81.225.

(2) *Conserving special abilities.* To conserve for the more difficult war pro-

duction problems, the resources of concerns best able by reason of engineering, managerial and physical resources to handle them, by placing contracts for items which involve relatively simple production problems with concerns, normally the smaller ones, which are less able to handle the more difficult problems.

(3) *Efficiency.* To use the minimum quantity of materials and minimum number of man-hours to make the supplies needed.

(4) *Keeping needed concerns intact.* To keep in operation concerns with experience and managerial or engineering staffs valuable to the war effort.

(5) *Flexibility.* To use concerns whose operations are most flexible so as to facilitate changes in specifications, quantities or rates of production.

(6) *Transportation.* To conserve transportation facilities by avoiding unnecessary cross hauling of raw, semi-finished or finished material from the point of origin to the point of consumption and by avoiding long hauling when such materials are available at a shorter distance.

(g) *Price.* (1) The application of the principles stated in paragraphs (a)–(f) of this section, will frequently require contracts to be placed with a producer whose costs and prices are higher than those of the lowest bidder. The supply services are hereby authorized and directed to pay prices higher than would otherwise be required to the extent that such action is necessary to carry out the foregoing policies. In any case where application of these policies will require award of the contract to a concern at a price so much higher than other available prices that the procurement officer is uncertain whether the award is justified, he may request instructions from the chief of the supply service concerned.

(2) When the foregoing policies have been met and selection among available contractors is still possible, contracts will be so placed as to obtain the lowest price for the Government. Moreover, the policy of selecting among available contractors on bases other than price does not mean that the price of the contractor selected is unimportant or to be disregarded. On the contrary, as is more fully explained in § 81.231 (b), when the contractor has been selected according to the foregoing principles the supply service must carefully negotiate the contract to insure that the price is fair in the light of the costs and circumstances of the particular producer.

(h) *Exceptions.* Upon specific request the Director, Purchases Division, Headquarters, Army Service Forces, may grant authority to depart from the policies stated in §§ 81.220–81.227. Requests for such authority stating the reasons therefor will be forwarded to the Smaller War Plants Branch, Purchases Division, Headquarters, Army Service Forces.

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§ 81.224 Contracts for newly developed articles. In placing contracts for new articles developed by a manufacturer for War Department use, the following principles will be observed:

(1) In general a substantial proportion of the initial orders for a new article should be placed with the manufacturer who developed it. Enough of the volume should be placed with other qualified producers, however, to develop at least one other experienced source; except in unusual cases this should be a going production order and not a limited quantity educational order.

(2) When the originating manufacturer demands a price for the item substantially higher than the price for which it can be secured elsewhere, or will require substantially more facilities or tools than some other producer in order to get into production, or is already heavily loaded with orders, and the article can readily be made by one or more other producers, the contracts for the article should be placed with such producers. In such cases the originating manufacturer should be fairly paid for his developmental work as such.

§ 81.225 Smaller war plants policy—
(a) Smaller War Plants Act. (1) Public Law 603 (77th Congress, approved June 11, 1942) creates the "Smaller War Plants Corporation", authorizes a Deputy Chairman of the War Production Board on Smaller War Plants and gives the Chairman of the War Production Board certain new powers incident to placement of Government contracts with smaller plants.

(2) Section 3 of the Act authorizes the Chairman of the War Production Board to certify small business concerns or groups of such concerns to the Secretary of War with respect to capacity and credit as to a specific Government procurement contract. The War Department is directed to accept such certification as conclusive and is authorized to place the contract with the concern or group of concerns without requiring the meeting of any other requirements with respect to capacity and credit. The Act recognizes that small plants are frequently unable to produce at as low unit costs as larger plants and that, as a consequence, in order to mobilize the Nation's full productive capacity, it may be necessary for the Government to pay a higher unit price for articles when obtaining them from small plants than it pays to business concerns operating large plants.

(3) The Act also gives the Smaller War Plants Corporation power to enter into prime contracts with the War Department for articles, equipment, supplies or materials, or parts thereof, or work in connection therewith and to subcontract the production of these items to small business concerns. If the Chairman of the War Production Board certifies that the Smaller War Plants Corporation is competent to perform any

specific government procurement contract, the contract must be let to it on such terms as the Chairman may specify. The Corporation is also given broad powers of financing.

(4) It is important to note that the Smaller War Plants Division of the War Production Board and the Smaller War Plants Corporation have separate and distinct functions. For convenience, the Smaller War Plants Division of the War Production Board will be referred to in this section simply as the War Production Board.

(b) General policy. (1) The established policy of the War Department is to place prime contracts and subcontracts with small business concerns or groups of such concerns without the necessity for certification by the War Production Board or for the making of contracts by the Smaller War Plants Corporation. To implement this policy, the procedure prescribed in the following paragraphs has been established in order to assist the smaller plants to participate to the greatest possible extent in the war effort.

(2) This procedure is briefly as follows: Under paragraph (c) of this section the Army supply program is reviewed to select products suitable for production by small plants. When actual procurements of suitable products are made, an agreed portion is allotted pursuant to paragraph (d) of this section for placement with small plants recommended by the War Production Board. Then the portion of the business so allotted to small firms is distributed by the contracting officers in accordance with paragraph (e) below. Finally, procedures to facilitate and encourage subcontracting to smaller firms under existing and future prime contracts are prescribed by paragraphs (f) and (g) below.

(3) To carry out this program the War Production Board has assigned a representative to each of the supply services and to each office originating procurement directives, and a Liaison Specialist to each contracting office. The chief of each supply service will also designate a liaison officer for his supply service for each office originating procurement directives, and a Smaller War Plants Contact Officer for each contracting office.

(4) The chief of each supply service will issue definite instructions to contracting officers at all levels in his service to do their utmost to see that all usable productive capacity is brought into the war effort whenever this will increase the volume or speed of production or will aid in clearing present or prospective shortages or bottlenecks.

(5) Unless the Director, Purchases Division, Headquarters, Army Service Forces, authorizes a variation therein, the procedure prescribed in paragraphs (d) and (e) of this section will be followed with respect to each proposed procurement directive of a supply service, except:

(i) Where secret or confidential items are procured; or

(ii) Where, in the judgment of the chief of the supply service, the urgency resulting from military necessity does not allow time to receive plant recommendations from the War Production Board; but in such cases the War Production Board representative at the originating office will be promptly notified of the item and the circumstances; or

(iii) Where the items involved have been determined in accordance with paragraph (c) of this section to be unsuitable for manufacture by smaller plants.

(c) Selection of products suitable for manufacture by small plants. With the active assistance of the liaison officer designated for this purpose by the chief of the supply service, the War Production Board representative will:

(1) Review with the proper personnel of the supply service the related parts of the Army Supply Program and select from it products suitable for manufacture by plants recommended by the War Production Board.

(2) Ascertain the total quantities of these selected products to be purchased.

(3) Discuss with the proper personnel of the supply service existing plans for the procurement of the selected products.

(d) Determination of portion of procurements allotted to recommended small plants. (1) With the active assistance of the liaison officer designated for this purpose by the chief of the supply service, the War Production Board representative on small war plants stationed at the office originating procurement directives will:

(i) Review with the proper personnel of the supply service each proposed procurement directive (with the exceptions stated in paragraph (b) (5) of this section and determine whether the products covered are suitable for manufacture in small plants;

(ii) Discuss with the proper personnel of the supply service existing plans for the procurement of such products as have been determined to be suitable for small plant manufacture, in order to ascertain whether, in the light of all the circumstances, existing plans provide for placement with small plants of a sufficient proportion of the procurement;

(iii) Reach agreement with the supply service, in cases determined to be appropriate under (i) (ii), on a definite portion of the products covered by the proposed directive, for placement as herein-after provided with plants recommended by the War Production Board;

(iv) Reach agreement as to the latest date when War Production Board recommendations on geographical allocation of its portion of the proposed procurement will be received by and agreed upon with the supply service. If, however, the recommendation has not been made within the time agreed upon, and military necessity does not permit

extension, the supply service may make the determination without the recommendation and issue procurement directives accordingly. (It has been agreed upon with the War Production Board that in making recommendations concerning this geographical distribution, consideration will be given to factors governing the plans of the supply service for the geographical distribution of the procurement as a whole, with a view to avoiding impracticable variations between the geographical distribution of the War Production Board part of the procurement and the remainder. The time which can be reasonably allowed for this recommendation will vary with the urgency of the procurement, and may range from 24 hours to several days.)

(v) Reach agreement as to the latest date when War Production Board plant recommendations will be received by the contracting office in the field. (The time to be allowed for this purpose will be made as long as is reasonable for each procurement, and will be set so that plants recommended by the War Production board will have substantially the same opportunity to bid or negotiate as other firms bidding or negotiating for the procurement.)

(2) Each procurement directive to a contracting office covering items agreed upon under subparagraph (1) will specify (i) the proportion of the total quantity allocated for placement by that office with plants recommended by the War Production Board, and (ii) the agreed date when War Production Board plant recommendations will be received.

(e) *Selection of concerns to receive business allotted to small plants.* (1) The War Production Board Liaison Specialist at each contracting office is its authorized representative at that office. One of his functions is to maintain contact with that office through its Smaller War Plants Contact Officer, whose duty is to assist the Liaison Specialist and to serve as a source of information for small plants. The War Production Board will advise its Liaison Specialist (i) of each procurement covering items agreed upon, (ii) of the amount set aside for the War Production Board at the contracting office, and (iii) of the agreed date when War Production Board plant recommendations are to be furnished by him to the contracting office.

(2) On receipt of these recommendations, the contracting office will review and discuss them with the Liaison Specialist and will determine which of the plants recommended are suitable, giving consideration to such engineering, financial or other assistance, as will be supplied by the War Production Board in the particular case, as authorized by Public Law No. 603, 77th Congress. If an insufficient number of suitable firms remain, the contracting office, if time permits, will receive further recommendations from the Liaison Specialist. If, however, these recommendations are not received by the agreed date or any extension thereof possible under the circumstances, or if the time does not permit the receipt of recommendations of additional firms, the contracting office

(if possible after consulting with and receiving recommendations from the Liaison Specialist as to any firm then under consideration by the contracting office) may place any remaining quantity of the procurement as it may determine. If urgent military necessity should require the shortening of the time originally agreed upon, the contracting office (upon such notice to and receipt of such recommendations from the Liaison Specialist as circumstances may in its judgment permit) may place any remaining quantity of the procurement as it may determine. The contracting office will be free at any time to make suggestions to the Liaison Specialist of additional suitable small plants for inclusion among the War Production Board plant recommendations.

(3) The contracting office will negotiate with those recommended firms which have been found suitable and will endeavor to place among an appropriate number of them, to be determined by it, the portion of the procurement set aside for the War Production Board. Negotiation and placement with these firms will be governed by the considerations stated in §§ 81.220-81.227 of the procurement regulations. The Liaison Specialist will be given opportunity to make representations to the contracting office in behalf of the recommended firms before decisions are reached on their bids, and will be promptly informed of such decisions when made.

(f) *Encouraging subcontracting under existing prime contracts.* In order to promote subcontracting to smaller plants under existing contracts, the following procedure will be used:

(1) Examination of existing prime contracts will be made by headquarters of the supply services in cooperation with representatives of the War Production Board to determine the possible extent of additional subcontracting thereunder of products suitable for placement with plants recommended by the War Production Board.

(2) All procurement agencies in the field, in cooperation with War Production Board Liaison Specialists, will expeditiously examine contracts with a view to the possibility of further subcontracting. All prime contractors will be advised of the necessity for cooperating in placing all work practicable under existing and proposed contracts with small plants on a subcontracting basis. Orders for new machine tools and equipment will be cancelled whenever the corresponding operations can be handled by subcontracting if production schedules can be maintained.

(3) As indicated by Public Law 603, 77th Congress, it will facilitate the prosecution of the war to utilize the facilities of smaller plants by subcontracting work to them wherever practicable. Accordingly, when the chief of a supply service or his duly authorized representative determines that it will accomplish this purpose, he is authorized to enter into and approve supplemental agreements amending or modifying existing contracts to provide for the payment of an increased price to the prime contractor to cover increased costs resulting from

additional subcontracting. Any such agreement will be made pursuant to the First War Powers Act, 1941, and may be made without consideration to the Government other than promotion of the policy stated by Public Law 603, 77th Congress, and in this paragraph.

(4) The procedure described in subparagraphs (1) to (3) above will also be applied to subcontracts where it appears to be practicable to get a subcontractor to spread his load among more subcontractors.

(5) The initial discussion with prime contractors and subcontractors relative to subparagraphs (1) to (4) above will be arranged through the War Department contracting agency in the field.

(g) *Encouraging subcontracting under future prime contracts.* The chiefs of supply services will facilitate discussion with War Production Board representatives as to subcontractors under future prime contracts. Such discussions can be undertaken either in the offices of the supply services in Washington or with the contracting officers in the field.

(h) *Limitations—(1) Standardization.* While the War Production Board representatives will be afforded every assistance for the further spreading of work to smaller plants, consistent with the maintenance of required delivery schedules and quality of production, standardization programs on items where a flow of replacement parts is a factor will also be taken into account.

(2) *Preventing abuses.* In carrying out the policy of spreading the work to smaller war plants, contracting officers and Liaison Specialists must take precautions to prevent abuse of the preferred position of such plants. For instance, a smaller war plant contractor should not be allowed to subcontract substantially the entire work to a large plant at a lower price and thereby to operate virtually as a contract broker.

(i) *Method of handling disagreements.* All matters of policy relating to increased subcontracting and to increased prime contracting with smaller plants will be dealt with for the War Production Board by the Deputy Chairman on Smaller War Plants, and for the War Department by the Smaller War Plants Branch, Purchases Division, Headquarters, Army Service Forces. On such matters, contact will be between these offices. Any disagreement between representatives of the War Production Board and of the supply services on any of the matters described in paragraphs (b) to (h) of this section will be referred by both parties to these offices for discussion and settlement.

§ 81.226 *Debarred bidders—(a) Persons disqualified.* Contracts will not be placed with persons who are on any of the following lists of debarred bidders.

(1) List of bidders debarred from bidding on War Department contracts by reason of violations of the Walsh-Healey Act (see § 81.916 et seq.).

(2) List of bidders debarred from bidding on War Department contracts by reason of violations of the Davis-Bacon Act (see § 81.910 et seq.).

(3) War Department confidential list of bidders to whom awards will not be made.

(4) The proclaimed list of blocked nationals which the Secretary of State from time to time publishes listing persons and organizations deemed to be acting directly or indirectly for the benefit of the enemy (see § 81.1102).

(b) *Distribution of lists.* The Adjutant General will distribute to the supply services lists of bidders debarred by the Comptroller General by reason of violations of the Walsh-Healey Act or the Davis-Bacon Act and copies of the War Department confidential list of debarred bidders. Copies of the proclaimed list of blocked nationals will also be made available to the chiefs of the supply services.

(c) *Procedures for placing bidders on confidential list.*—(1) *Authority.* The Adjutant General will place a bidder upon the confidential list of bidders to whom awards will not be made (i) where the Director, Purchases Division, Headquarters, Army Service Forces, determines that the bidder has been guilty of fraud or attempted fraud against the United States, or (ii) for the duration of the present war, in any instance where the Director, Purchases Division, determines that the best interests of the United States require that contracts be not awarded to the bidder. In recommending that a bidder's name be placed on the list, the chief of a supply service will submit to the Director, Purchases Division, a full report of the specific instances of the bidder's alleged dereliction together with any available evidence relating to the contract concerned and the complaint against the bidder.

(2) *Notice.* If such action has not already been taken, the Director, Purchases Division, will send to the bidder by registered mail, a notice stating (i) that a recommendation has been made that the bidder's name be placed on the War Department's confidential list of bidders to whom awards will not be made, (ii) the specific contract, bid, or action of the bidder as to which complaint is made, and the specific nature of the complaint in reasonable detail, and (iii) that the bidder may make a statement in writing with respect to the complaint on or before a date fixed in the notice. The bidder will not be given access to any evidence in the hands of the War Department, except in the notice and statement required by this paragraph (2).

(3) *Direction.* The Director may make such investigations and study of the complaint, either directly or through the Judge Advocate General or Inspector General, as he deems proper. If the Director determines that the bidder's name should be placed on the confidential list, he will transmit to the Adjutant General (i) the complete file, including any statement filed by the bidder, together with the direction to place the bidder's name on this list, and (ii) drafts of notices of the action taken to be sent by the Adjutant General to

the bidder, the supply services and the Comptroller General.

§ 81.227 *Factors governing revision of existing supply contracts.* (a) In connection with adjustments of supply contracts growing out of changes in the Army Supply Program, in each instance consideration will be given to the factors comprehended by the broad headings below:

- (1) Minimum use of material.
- (2) Minimum man-hours.
- (3) Status of facilities.
- (4) Labor supply area.
- (5) Flexibility for revisions—shift operations one form of flexibility.
- (6) Extent of subcontracting.
- (7) Strategic considerations.
- (8) Comparative costs.
- (9) Engineering background.
- (10) Horizontal adjustment.
- (11) Effect on manufacturer and subcontractors involved.
- (12) Use of facility for other war work.
- (13) Effect on transportation—minimum of cross-haul.

(b) Where adjustments in any program are indicated, particular weight should be given to continuing in operation those facilities employing the minimum amount of material and the minimum number of man-hours to complete like components and like end-products. These considerations alone should not control; each of the other items enumerated should be taken into account, so that the final result reflects evaluation of all factors enumerated.

(c) Where existing facilities are adequate to care for the program projected, consideration should be given to immediate cancellation of incomplete facilities, including machine tools, jigs and fixtures. In individual cases it may be sound procedure to plan on completing specific facilities even though existing facilities are in balance with current estimates of requirements.

(d) In cutting back facilities, with the background of changing requirements growing out of demands of war, and in the interest of flexibility, consideration should be given in each instance to the desirability of partial multiple shift operations in all or certain plants, in contrast with full shift operations in some plants, to avoid possible resultant abandonment of facilities which would not be otherwise used to good advantage in the war effort.

(e) In cutting back facilities, firms which employ 100 wage-earners or less, or which were recommended as prime or subcontractors by the Smaller War Plants Division of the War Production Board, shall be given preferred consideration, if reasonably efficient in their operations.

CONTRACT PRICE POLICIES

§ 81.230 *Basic objectives.* Policies regarding contract prices have three main objectives: to maintain incentives for efficiency reductions in costs and maximum production; to obtain fair prices and prevent excessive profits; and to contribute to the control of inflation.

(a) *Incentives.* Increasing shortages in materials and manpower imperatively

require that all producers be encouraged to operate at their highest attainable efficiency with the minimum waste or misuse of materials and labor, if maximum production of war equipment is to be reached and maintained. Increased efficiency, improved methods, and lower costs mean better use of available resources and savings in labor, materials and facilities and can be encouraged by making profits depend on efficiency. This requires careful purchasing and contracting to keep prices close enough to costs so that producers must exercise careful management and ingenuity to increase production and decrease costs in order to earn a reasonable profit.

(b) *Profit control.* In spending public money the War Department has the duty to see that its purchases are made at fair prices. In addition, by section 403 of Public 528, approved April 28, 1942, and amended October 21, 1942, the War Department is directly charged with the responsibility for preventing and eliminating excessive profits on its contracts and on subcontracts thereunder. In many cases, skillful and careful negotiation of contracts will prevent excessive profits from accruing and make their renegotiation unnecessary.

(c) *Inflation.* For many types of military commodities ordinary methods of price control by maximum price regulations, formulas and ceilings become extremely complex and difficult to administer, and divide procurement responsibility. At the request of the War and Navy Departments the Office of Price Administration has agreed to refrain from further extending its price control over strictly military items, and in return the War and Navy Departments have undertaken the responsibility for maintaining control of prices in this limited exempted area. (See § 81.1131 (c).)

§ 81.231 *General policy.*—(a) *Sound pricing.* The three objectives stated in § 81.230 are all closely related and must be handled accordingly. In order to promote efficiency and prevent inflation, it is vitally necessary to obtain sound contract prices reasonably close to costs, since recapture of profits for past periods on renegotiation will not operate to control costs or inflationary tendencies. This requires effective purchasing and price supervision to obtain well-negotiated original contracts. The chief of each supply service will see that this policy is implemented and followed in his service. This will require the use of appropriate contracts and contract provisions (discussed in §§ 81.230-81.238), adequate methods of negotiation (discussed in §§ 81.240-81.248) and effective price supervision (discussed in §§ 81.250-81.256).

(b) *Relation to contract placement policies.* This basic policy of emphasizing the price element in negotiating contracts, stated in the preceding paragraph, is not inconsistent with the relatively minor importance of price in selecting contractors, stated in § 81.223 (g). The selection of a contractor for a particular contract from among the qualified producers is based primarily on policies regarding speed and quality in per-

formance and efficient use of manpower, materials and facilities. (See § 81.223 (a)-(g)). In making this choice among producers the price of a particular producer as compared to other available producers is considered as less important than these other policies. When these other policies are satisfied by several producers, however, choice is based on comparative price. Moreover, the price to be fixed in the contract with the producer selected on these bases is vitally important. The fact that the war program requires that contractors be selected on bases other than comparative prices, makes it especially necessary to have sound methods of negotiation and price supervision to ensure that the contract prices agreed upon with such contractors will be close enough to their costs to encourage efficient operations, to prevent excessive profits and to restrain inflationary influences.

§ 81.232 Cost-plus-a-fixed-fee contracts—(a) Disadvantages. Fixed-fee contracts have the following disadvantages:

(1) The fixed-fee contract does not encourage efficiency to the same extent as the well-negotiated fixed price contract. While the fixed-fee contractor is obligated to perform in an efficient manner, he does not have the same direct financial inducement to economize in the use of materials, machinery or manpower, or to keep down material and labor costs, or to use ingenuity and inventiveness in finding substitutes and improvements.

(2) Such contracts require uneconomical use of executive, auditing and administrative personnel, both by the Government and the contractor, in checking and rechecking vouchers, in auditing and allocating costs and in adjusting accounting questions.

(3) The financial pressures which restrain a fixed price contractor in competing for labor and accumulating inventories do not apply to the same extent to the fixed-fee contractor.

(b) *Use discouraged.* For the foregoing reasons supply contracts will be made on a cost-plus-a-fixed-fee basis only if no practicable alternative exists. Difficulties in estimating costs with reasonable accuracy because of possible future fluctuations in material or labor costs should not be regarded as an adequate reason for using this type of contract. Even the unfamiliarity of the contractor with the manufacturing process involved, as in the case of new, experimental or developmental articles, does not necessarily justify the use of the fixed-fee contract. For instance, the experience of other manufacturers may often provide sufficient basis for estimating costs and fixing the price, or a fixed price contract may be used with provision for redetermination or for upward or downward price revision, as soon as costs become known and reasonably stable.

(c) *Conditions on use.* In the exceptional cases where the cost-plus-a-fixed-fee form is used for a supply contract the following conditions will be met:

(1) When the contractor is to be reimbursed for substantially all its costs,

the fixed fee represents essentially profit without risk. It should be determined not by the amount of the estimated cost, but by the extent and nature of the work supervised or the services to be performed by the contractor. Thus in fixing the fee consideration should be given, among other things, to whether the work or production involved is complicated or simple, the turnover slow or rapid, how much or little of the work will be subcontracted, and how extensive or difficult the duties of the prime contractor will be in supervising the subcontracted work.

(2) Whenever feasible, the contract will include a provision for conversion of the contract as soon as practicable to a fixed price basis related to the costs during the early part of the contract. (See § 81.1225.)

(3) If conversion to a fixed price basis is not feasible, consideration will be given to inclusion of a provision for upward or downward adjustments in the fee based on efficiency after a test period. (See § 81.1226.)

(4) The article for statutory renegotiation of the fixed-fee will be included in accordance with § 81.1208 (b).

(5) In no case will the fixed-fee exceed the statutory maximum of 7% for supply contracts.

(d) *Construction contracts.* Whenever feasible, construction contracts will be made on a fixed price rather than a fixed-fee basis.

(e) *Existing contracts.* Whenever feasible, existing fixed-fee contracts will be amended to convert them or provide for converting them to a fixed price basis as soon as practicable.

§ 81.233 Fixed price contracts—(a) Advantages. The ordinary fixed price contract without provisions for adjustment gives a contractor maximum incentives for efficiency if the original price is well negotiated. It is generally suitable for contracts of reasonable duration for standard articles made by an experienced producer. It should be used wherever conditions permit.

(b) *Limitations.* Under war conditions, however, the ordinary fixed price contract is not practicable for certain types of cases:

(1) When the articles required are new, experimental or developmental, or unfamiliar to the contractor, the lack of cost experience may prevent the setting of a fair price when the contract is made.

(2) Even where cost experience exists, shortages of materials, priorities and allocations and changes in the quantities and rates of delivery may seriously affect the costs during performance of the contract.

(c) *Adaptation to war conditions.* To meet these and other situations and to facilitate the use of the fixed price contract, various provisions and policies have been developed including the following:

(1) Termination articles.

(2) Financing provisions.

(3) Price adjustment based on production experience.

(4) Provisions to assume specific risks and for short-term pricing.

(5) Periodic adjustment of price and exemption from renegotiation.

(6) Adjustments and relief, without contract provisions, under the First War Powers Act.

These provisions and policies are intended to adapt the fixed price contract to war conditions, to minimize the risks of the contractor from unpredictable contingencies, and to facilitate obtaining contract prices close to costs. To the extent that the risks of unpredictable contingencies are reduced, the contractor does not need reserves or allowances against them in his price.

§ 81.234 Termination article. The risk of loss from termination of the contract, either for a change in the procurement program or upon cessation of hostilities, would deter contractors from making fixed price contracts or would require large allowances in the price to protect against this risk. The termination article is designed to remove this risk of loss by guaranteeing the contractor payment for all proper expenditures and costs in connection with the contract and an appropriate allowance for profit on the unfinished work in process, and by providing for expeditious settlement and payment of the amounts due. (See § 81.324.) These provisions reduce to the minimum any hardships on contractors resulting from necessary adjustments and reductions in the supply program.

§ 81.235 Financing provisions. Lack of working capital or difficulties of financing would discourage contractors from undertaking fixed price contracts and necessitate the use of cost-plus-a-fixed-fee contracts. To overcome this, the War Department has arranged various methods of assisting contractors and subcontractors in financing war business. Three of these are (a) partial payments, (b) advance payments, and (c) guaranteed loans. The principles and purposes governing the use of these financing methods are discussed in §§ 81.319-81.321, 81.330, and 81.331. Other arrangements have been provided to assist with the financing and construction of plant facilities expansion. These are discussed in §§ 81.1001-81.1019. Finally, the right to assign government contracts as security for financing is dealt with in § 81.318a.

§ 81.236 Price adjustment provisions—(a) Price adjustment based on production experience. To adapt the fixed price contract to cases where the lack of experience with production of a new or unfamiliar article makes dependable estimates of costs and prices impracticable, several types of clauses have been developed to permit the fixing of a tentative price with provision for adjusting or fixing the price after part performance has supplied the necessary cost data. These clauses, discussed in §§ 81.1220-81.1226 make the use of the cost-plus-a-fixed-fee contract unnecessary in such situations. For cases where the fixed-fee contract cannot be avoided, clauses are provided for converting it to a fixed price basis after part performance or for relating the fee to efficiency in production in order to minimize the

disadvantages of this form of contract. (See §§ 81.1220-81.1226.)

(b) *Provisions against specific risks.* Normally contractors attempt to protect themselves against risks which will increase the cost of performance by allowances in their prices. Under war conditions, certain risks affecting the costs of performing war contracts, especially those of long duration, are particularly difficult to predict. If contingency allowances to cover them were permitted, it would make prices unreasonably high and reduce the incentives for efficient operation. Accordingly, it is the policy of the War Department to reduce the necessity for such contingency allowances in fixed price contracts as much as possible by contract provisions assuming certain unpredictable risks not subject to the contractor's control. Various contract articles of this type are discussed in §§ 81.1230-81.1236. In return for the benefits of these provisions, the contractor will be required to eliminate from his price the allowances or reserves which would otherwise be needed to protect against these risks.

(c) *Short-term pricing.* These uncertainties as to future conditions can also be minimized by fixing prices for limited periods only. For commodities which do not involve a long period of production or planning, this can be done merely by making short-term contracts. Where longer contracts are necessary for production or other reasons, similar benefits can be obtained by providing for revising the price for future deliveries after a reasonable period. Such articles are discussed in §§ 81.1230-81.1236.

(d) *Periodic adjustment of price and exemption from renegotiation.* The accumulation of more experience and data covering production and costs has made feasible a new type of contract combining (1) periodic adjustment of price at regular intervals during the life of the contract (compare paragraph (c) above) with (2) provision for exemption from renegotiation if the adjusted price is sufficiently low. It is designed to unite maximum incentives for efficient production with adequate control of profits and prices, by giving the contractor firm prices without commitments of too long duration. This type of contract is discussed in §§ 81.1240-81.1247.

§ 81.237 *Adjustments without contract provisions.* Paralleling the contract provisions for price revision discussed under § 81.236, and necessary to complete the price program, are the policies regarding price adjustments and other relief under Title II of the First War Powers Act and Executive Order No. 9001 in the absence of contract provisions. Thus where a contractor, who has kept down the contingency allowances in his price, suffers some unexpected risk or event, it may often be equitable and in the interests of the Government for it to adjust the contract price or other terms by supplemental agreement so as to assume some or all of any resulting increases in costs. By granting such relief to contractors in appropriate cases, either with or without consideration, the Government will reduce the necessity for

large allowances in prices and encourage greater cooperation by contractors. The application of these policies is discussed in §§ 81.1250-81.1252.

§ 81.238 *Policies on certain special items of cost—(a) Amortization.* Under section 124 of the Internal Revenue Code, contractors who construct or acquire facilities necessary for the war effort are allowed under certain conditions to amortize the cost of them for tax purposes over a period of sixty months instead of the longer period of normal depreciation. This special tax credit was provided by Congress in order to encourage contractors to provide such facilities from their own funds rather than at Government expense. In view of this purpose, it is essential that in negotiating contracts involving the use of such facilities, the expense of such facilities be not passed on to the Government and that the price be fixed on the basis of only normal depreciation on the facilities and not at the accelerated rate of amortization permitted for tax purposes by section 124. In other words, the contractor may not treat the amortization at the accelerated rate as a cost against war contracts, but must provide for the excess over normal depreciation from his normal profit; this the tax credit greatly facilitates by leaving a larger net profit after taxes available for this purpose. Where the contractor desires the contract price to provide for a larger amount of the cost of such facilities, the Government is in effect paying for the facilities to the extent of the additional amount included in the contract. In such cases the contract must state the amount so included in the price and must contain suitable provisions to protect the interests of the Government in the facilities in accordance with § 81.1007 and following.

(b) *Reconversion and storage.* (1) In appropriate cases, the cost of converting plants to war production, including the removal of existing equipment and incidental building alterations, may be included in cost and therefore in the contract price and the contract may provide for payment, on termination of production for the Government, of the costs of removing Government-financed machinery and equipment, and of preparing it for storage and shipment.

(2) The Government will not bear either directly or indirectly, however, any part of the cost of reconverting the contractor's plant to commercial production (including installation of privately-owned machinery and equipment) or the cost of storing such machinery and equipment during the period between conversion and reversion. This policy applies to all types of contracts, whether facilities contracts, cost-plus-a-fixed-fee contracts or fixed price contracts. It does not, however, prevent giving a contractor, in exceptional cases where fairness so requires, special protection against loss through early termination of the contract in accordance with § 81.324 (e).

NEGOTIATION OF CONTRACTS

§ 81.240 *Method of contracting—(a) By negotiation.* Except as provided in

paragraph (b) of this section, all contracts and purchases made by the War Department will be made by negotiation under authority of the First War Powers Act, 1941, and Executive Order No. 9001, and in accordance with these procurement regulations. While this Act and Executive Order are construed to embody all the authority conferred by sections 1 (a) and (b) of the Act of July 2, 1940 (Public Law No. 703, 76th Congress), as extended, the earlier Act may also be cited as authority for contracting in appropriate cases if desired (see § 81.204 (a)).

(b) *By formal advertising.* When authorized by the Director, Purchases Division, Headquarters, Army Service Forces, contracts may be placed by formal advertising instead of by negotiations if deemed necessary in the interests of the Government.

(c) *Aids to negotiation.* Sound purchase control requires that the original contract be well negotiated on the basis of reliable cost experience and close estimates. To do this, all available information and aids to negotiation must be used as effectively as possible. This section deals with some of the methods and data which will assist such sound negotiation of contracts.

§ 81.241 *Methods of negotiation—(a) General rule.* Subject to specific provisions of these regulations, the chief of each supply service may determine the methods of negotiation to be followed by his service. Any method which, in the judgment of the chief of the supply service concerned, will result in the most efficient award of contracts and will protect the interests of the Government, is hereby authorized. Such methods may include not only face to face dealing but also informal written bids or telephone quotations, but the request for any such bids or quotations will clearly indicate that it is made under the authority of the First War Powers Act, 1941.

(b) *Decentralization.* The chiefs of the supply services will decentralize to their field agencies the actual work of negotiating contracts to the greatest extent consistent with efficiency and proper safeguarding of the public interest.

§ 81.242 *Use of informal bids.* Where consistent with the required speed of war procurement, notification of the proposed procurement will be given to a reasonable number of qualified producers and suppliers, and quotations secured from them.

§ 81.243 *Standard proposal forms—(a) Use.* Where the article is to be specially manufactured according to specifications it is useful to have a standard form for the contractor to use in submitting his proposal. Such standard proposal forms assist in obtaining all of the necessary information from the contractor at the same time and facilitate the comparison and evaluation of proposals from several producers, by insuring a uniform basis of statement.

(b) *Contents.* Such standard proposal forms should ordinarily require the following types of information—

(1) Separate quotations for the basic (or major) item, essential extra parts

and assemblies, initial and extra equipment, and the costs of additional facilities required by the contractor.

(2) Proposed delivery schedule.

(3) Summary of the approximate number, amount and extent of completion of other outstanding Government contracts.

(4) Itemized estimate of cost of production with adequate explanation of the basis used for allocating overhead, etc.

(5) Statement showing the cost experience for the same or similar items under other recent contracts.

(6) Statement as to labor needs and supply, contemplated hours of work and number of shifts.

(7) Contemplated method of financing the contract.

(8) Statement of material to be furnished by the Government and disposition of scrap therefrom.

(9) Summary of types and extent of subcontracting.

(10) Requirements for additional equipment and facilities.

(11) Statement of any optional clauses desired in the contract.

(12) Statement in detail of taxes included in the price and their estimated amount, and of any taxes to be excluded from the price for which contractor will claim reimbursement or a tax exemption certificate.

To avoid unnecessary duplication of paper work, a contractor should generally not be required to supply information required by subparagraphs (3), (5) and (9) where he has recently submitted the same information or it is otherwise available to the procurement office or its preparation will involve undue difficulty in view of the size of the contract.

(c) *Value.* The information obtained from the proposal forms will permit the selection of the appropriate contractor in accordance with section II of this regulation and will provide a basis for negotiations with that contractor in accordance with this section.

§ 81.244 Purchase analysis—(a) Price comparison. Comparative prices for similar items compiled in accordance with § 81.251 will be made available to contracting officers for use in negotiating new contracts. The prices offered for new contracts should be carefully compared with previous prices for similar items, making allowance for improved methods, rates of production, type of facilities and other factors. Where proposals are obtained from several producers they should be similarly compared with each other.

(b) *Renegotiation information.* The chief of each supply service will insure that contracting officers make regular use of studies and other information compiled by the price adjustment and cost analysis sections and useful in negotiating with contractors, such as data on volume of business, the policies regarding overhead and reserves, rates of profit and other material. (See § 81.252.)

(c) *Cost analysis.* When the prices or cost estimates submitted by a producer are out of line with previous experience or other proposals and use of his facilities is necessary or desirable in accord-

ance with the policies stated in §§ 81.220-81.227 of this Regulation, an analysis of the contractor's costs should ordinarily be made in order to find the causes of the higher costs or prices. Likewise where prices or cost estimates of a producer for an unfamiliar item are so low as to indicate mistakes in the estimates, a similar study should be made. Such study and analysis should be limited to the minimum necessary to obtain the required information and should be made with the least possible inconvenience to the producer. (See § 81.253.)

(d) *Check lists.* Orderly and speedy negotiations are facilitated by the use of standard negotiation check lists. Such forms should be designed to indicate the information to be obtained from the contractor and from other sources and the methods to be used in evaluating this material and in arriving at the final contract terms.

§ 81.245 Special clauses. The contracting officer should consider in each case whether use of any of the various articles for price adjustment discussed in §§ 81.230-81.238 and in §§ 81.1200-81.1291 is desirable. When such articles are used, the contracting officer will satisfy himself that the original price is sufficiently reduced, by eliminating or reducing contingency reserves and by lower profit margins, to justify the Government in agreeing to such adjustment provisions in favor of the contractor.

§ 81.246 Compulsory purchases. Where a fair contract cannot be obtained by voluntary negotiation, it may be necessary to resort to compulsory methods.

(a) *Mandatory orders.* Under section 9 of the Selective Training and Service Act of 1940 a mandatory order may be placed with any producer to require him to supply any item of the nature and kind usually produced or readily capable of being produced by him, for a fair and just compensation. While the general use of such orders is not favored, they should be resorted to where necessary after patient negotiations have failed. Thus where a qualified producer refuses to make a contract upon terms which in the opinion of the contracting officer are fair, the chief of the supply service may request the issuance of a mandatory order to the producer. Such requests will be forwarded to the Director, Purchases Division, Headquarters, Army Service Forces, and will state the reason for the request.

(b) *Requisitioning.* When needed articles are already in existence, but cannot be bought after reasonable negotiations, they may be obtained by requisition in accordance with §§ 81.1401-81.1428.

§ 81.247 Assistance by Headquarters, Army Service Forces. The Purchase Pricing Methods Branch, Purchases Division, Headquarters, Army Service Forces, will assist any service in preparing standard forms for proposals by contractors, evaluation sheets or check lists and other aids to effective negotiation.

§ 81.248 Purchasing by prime contractors—(a) Purchasing methods of

cost-plus-a-fixed-fee contractors. Cost-plus-a-fixed-fee contractors should ordinarily make their subcontracts and purchases by negotiation rather than by formal advertising. In connection with such negotiations, they will obtain informal quotations from qualified suppliers whenever feasible, but evidence of formal competition will not be required in connection with such agreements unless the contracting officer directs otherwise.

PRICE SUPERVISION

§ 81.250 General policy. For the reasons stated in § 81.230, the War Department is responsible for supervising and controlling the prices of all supplies and equipment procured and of the various items and services entering into the costs of these supplies and equipment to insure that such prices are reasonable and not excessive. Sections 81.250-81.256 deal with the performance of this responsibility by the services.

§ 81.251 Price analysis—(a) Functions. The chief of each supply service will maintain within his service appropriate agencies to perform the following price analysis functions:

(1) To assemble, analyze, interpret and disseminate price data for all important items procured by the supply services and for important component items entering into the costs of such items;

(2) To prepare special price analysis reports for procurement officers; and

(3) To compile and maintain comparative price records and indices for such items and their important components.

(b) *Sources of data.* In performing their functions, price analysis agencies will make use of the following types of information:

(1) Contract prices for similar items, which will be compiled on a comparable basis with respect to the basic (or major) item, essential extra parts and assemblies, initial and extra equipment, Government furnished equipment and scrap salvage.

(2) Cost estimates and other relevant data from proposals submitted by contractors.

(3) Analyses of the effect of major production and engineering problems on prices and costs.

(4) Prices paid for important subcontracted items. (See § 81.254.)

(5) Breakdowns of costs of subcontractors and sub-subcontractors based on production experience.

(6) Balance sheets and operating statements and similar data for contractors and subcontractors from price adjustment sections and financial services.

(7) Information from other Government agencies such as the Office of Price Administration. (§§ 81.1130-81.1135.)

(8) Where necessary, audits of costs of contractors and subcontractors made by the cost analysis sections.

(c) *Use of price data.* (1) The price analysis agencies will prepare full analyses and reports on the comparative prices paid for important items and their

components, making proper allowance for differences in the size of the contract, in design, local wage scales, type of facilities, contract terms and other factors. These reports will be in a form usable by procurement officers and price adjustment sections and will contain any recommendations for necessary or desirable action by them.

(2) In making or revising contracts, procurement officers will consult with the appropriate price analysis section and make use of all pertinent price analyses and reports then available.

(3) The price analysis agency will cooperate closely with the price adjustment sections and will make available to them price analyses and reports for use in renegotiation. When renegotiation reveals excessive profits the price analysis agency should immediately make studies of the prices of such contractors.

(4) Price records on items procured by the supply service and important components will be kept in such manner as to be readily available for reporting to higher authority or to the Office of Price Administration as requested.

(d) *Corrective action.* When price analysis reveals that the prices of comparable items are out of line, the procurement officer directly concerned will immediately initiate measures to discover the reasons. The appropriate measures will depend upon the particular situation. The contractor or his important subcontractors may be required to furnish a breakdown of actual costs based on production experience. When these are inadequate, cost audits or spot checks may be undertaken through the cost analysis section, and studies of purchasing methods may be made in accordance with § 81.254. Unless the facts disclose that differences in price are justified by higher costs and by the policies stated in §§ 81.220-81.227 negotiations will be initiated for appropriate adjustments in contract or subcontract prices.

§ 81.252 *Profit analysis.* The studies, by the price adjustment sections of each supply service, of the overall costs, profits and financial position of contractors and subcontractors provide valuable data to assist contract negotiation, such as information regarding overhead, reserves, profit margins, volume of business and similar matters. The chief of each supply service will make arrangements to insure that such information is made readily available in useful form for procurement officers in conducting negotiations with such contractors and for price analysis agencies in performing their functions.

§ 81.253 *Cost analysis—(a) Organization.* Each supply service will maintain appropriate agencies to perform cost-analysis functions and to act as fact finding units with respect to costs and profits on its contracts and subcontract for use in negotiations by contracting officers as well as in renegotiation by price adjustment sections. The chief of each supply service may assign the cost analysis functions to such place in the organization of the service as

seems most appropriate to him to permit their effective performance; they need not be placed in the fiscal section of the supply service unless the chief of the service so decides.

(b) *Functions.* When a cost analysis study of any contractor is made to prepare reports for the price adjustment section, there will also be made such study as seems appropriate in each case to aid procurement officers in future contract negotiations with the contractor. In addition, whenever price analysis indicates that prices or costs of a particular contractor or subcontractor are out of line and the procurement officer so requests, the cost analysis agency will make necessary studies of any contractor or subcontractor. Such studies will be limited to the extent necessary to obtain the desired information.

§ 81.254 *Supervision of subcontracts and purchases—(a) Policy.* The Government is vitally interested in the prices of component parts and materials of the items which it procures. The prices for such component articles are reflected in prices under fixed price prime contracts and are directly reimbursed under fixed-fee contracts. If excessive, such prices encourage inefficiency, inflationary expenditures and excessive profits in the same manner as excessive prime contracts prices. Accordingly, the War Department and supply services must also supervise these prices. Because the Government could not attempt to inspect or approve individual purchases under all fixed price and fixed-fee contracts, they must be supervised by more selective methods adapted to varying circumstances.

(b) *Methods of supervising purchases under cost-plus-a-fixed-fee contracts.* While the cost-plus-a-fixed-fee contractor is responsible for efficient buying, the lack of direct financial incentives for economy makes it essential to supervise its purchasing with respect to prices, quantities and capacity of suppliers. Experience has shown that detailed prior approval of all purchase orders and subcontracts under fixed-fee supply contracts is less efficient for this purpose than more selective methods. Accordingly the following procedure for supervision will be adopted in the case of supply contracts.

(1) The purchasing policies and methods of the cost-plus-a-fixed-fee contractor should be carefully analyzed to determine their adequacy for sound purchasing. This analysis should ascertain (i) whether prices paid are reasonable; (ii) whether quantities purchased are proper; (iii) whether suppliers and subcontractors are reasonably qualified; (iv) whether the purchasing personnel are well-qualified; and (v) whether purchasing procedures are sound and adequate.

(2) If the purchasing policies and methods are adequate with respect to prices, quantities and suppliers and are consistently followed, prior approval of subcontracts and purchase orders by the representatives of the contracting officer need not be required, or may be lim-

ited to those of substantial amounts, if regular selective checking is maintained instead.

(3) If the purchasing methods are inadequate in any respect, steps should be taken immediately to require the contractor to correct the deficiency, and if necessary, prior approval of subcontracts and purchase orders by the representative of the contracting officer to check on the propriety of the prices and other terms should be required until the deficiency is corrected.

(4) Periodically a report should be prepared with respect to each important contractor, stating the results of the inspection of the purchases and examination during the preceding period.

(5) If at any time the chief of a supply service finds that the selective method of supervision is inadequate, he may require such further supervision, including prior approval of purchase orders and subcontracts, as he deems necessary.

(c) *Methods of supervising purchasing by fixed price contractors.* (1) In the case of fixed price contracts, the contractor ordinarily has strong incentives to purchase at low prices in order to enhance the profit, but with high excess profits taxes and renegotiation, this incentive can be fully maintained only by keeping the prices under prime contracts close to minimum costs. For this purpose procurement officers must have adequate information on what component parts and materials should cost if well purchased and must know whether the contractor is equipped to obtain the best prices available.

(2) Price analyses in accordance with § 81.251 will supply necessary information. In that connection, the purchasing policies and methods of important fixed price contractors should be analyzed in the manner described in paragraph (b) of this section. When such analysis or the study of the prices paid by different contractors for important component parts and materials reveals deficiencies, they should be called to the attention of the contractor with recommendations for their correction.

(d) *Personnel.* A selective method of control requires the use of well trained and experienced personnel with a knowledge of purchasing methods and industrial costs and prices. Each service should obtain an adequate number of qualified officers or employees to perform these functions.

§ 81.255 *Sanctions.* Whenever study or analysis reveals that the prices of a contractor or subcontractor are excessive, and he refuses to make appropriate adjustments, the facts should be reported through the chief of the supply service to the Purchases Division, Headquarters, Army Service Forces. In appropriate cases the Director may then authorize action to correct the situation by the use of compulsory orders, renegotiation, or other means.

§ 81.256 *Coordination.* Each supply service may determine the form of organization necessary to perform the foregoing functions within its service and to obtain their essential coordination and

their integration with procurement. Thus, in its discretion, a supply service may combine these functions in a single agency or assign them to several separate agencies. Because these various price functions are so closely related, however, it is recommended that even where they are performed by several agencies in any service, all of them should be coordinated and integrated under a single head. Such an agency should supervise within the service all functions relating to contract clearance, negotiation aids, price analysis and supervision, liaison with the Office of Price Administration, renegotiation and price adjustment, and price research. This policy has been followed in Headquarters, Army Service Forces, by the creation within the Purchases Division of an Assistant Director for Price responsible for supervising all of these functions. Creation of a similar agency in each service will facilitate coordination and cooperation between Headquarters and the services.

PURCHASE ACTION REPORTS

§ 81.291 General—(a) Statistics and Progress Branch. Under General Orders No. 14, Headquarters, Army Service Forces, dated June 12, 1942, the Statistics and Progress Branch, Control Division, Headquarters, Army Service Forces, was established. This branch is responsible for supervision, preparation and submission of all purchase reports required by law to be submitted by the War Department to The Congress, as well as to other Federal agencies, authorized to receive such reports. Effective July 1, 1942, it will be the responsibility of every station to make reports of purchase actions as outlined in the succeeding paragraphs. The reports will cover all negotiated purchase actions in excess of \$10,000 for all types and kinds of things and services, supply contracts (including purchase actions for engineering or architectural services, maintenance of real estate and procurement of abstracts of titles) and purchase actions for the acquisition and leasing of real estate; also purchase actions for construction services, contracts with Defense Plant Corporation and purchase actions for utilities.

(b) Reports required to be filed. The reports required to be filed are those specified in §§ 81.293 and 81.294. As indicated in paragraph (e) (3) of this section, reports submitted by stations under the jurisdiction of the Special Services, Army Service Forces and the Administrative Services, Army Service Forces, are required to be transmitted to the Statistics and Progress Branch. In the case of reports submitted by stations under the jurisdiction of the chiefs of the supply services and the commanding generals of the service commands (including the Commanding General of the Military District of Washington), such reports are not, as indicated by paragraph (e) (4) of this section, required to be transmitted to the Statistics and Progress Branch. Instead, recapitulations of such reports are required to be filed with that Branch (see § 81.292). In any case where supplementary information is required for operating purposes of a serv-

ice, the chief of that service may direct supplementary data to be submitted to him.

(c) Service required to prepare original reports. When reallocation or sub-allotment of funds is involved, the post, camp or station to which funds are assigned is responsible for making the reports required to be filed under §§ 81.293 and 81.294.

(d) Signing of reports. Reports will be signed by the Officer in Charge. At procurement stations on the exempted list, it will be the Commanding Officer; at posts, camps, or stations on the non-exempted list, it will be the supply officer in charge of procurement covered by the report.

(e) Procedure for forwarding reports—(1) Time. The reports will be forwarded by each station to the chief of its respective service. The reports required to be filed under § 81.293 should be forwarded so as to be received by the fifth calendar day following the purchase action; those required to be filed under § 81.294, should be forwarded so as to be received by the fifth calendar day following the close of the month.

(2) Number of copies. Two copies will be prepared by the station originating the purchase. The original signed copy will be forwarded as indicated in subparagraphs (3) and (4) below. The carbon copy will be retained for reference by the station preparing the report as indicated in subparagraph (6) of § 81.293 (a). This subparagraph will become effective May 1, 1943.

(3) Reports by exempted and non-exempted stations. Reports (both individual action reports and monthly summary reports) will be submitted to the chiefs of the various supply services (including the Commanding General, Materiel Command, Army Air Forces) and to the Commanding Generals of the Service Commands (including the Commanding General, Military District of Washington). Copies of these reports will be submitted to one of these locations. Only those relating to contracts which have been numbered as service command contracts in accordance with § 81.318b (e) will be submitted to the Commanding Generals of the service commands; and those numbered as supply service contracts in accordance with § 81.309 (b) will be forwarded to the chiefs of the supply service concerned. This will apply to all types of installations whether Class I, II, III or IV. Separate summary reports will be submitted to the Commanding General of the service command and to each of the supply services concerned.

(4) Transmission of reports by Special Services and Administrative Services. In the case of reports submitted by stations under the jurisdiction of the Special Services, Army Service Forces and the Administrative Services, Army Service Forces, one copy of each report forwarded will be retained by the office of the chief of the service involved and the original will be forwarded from said office to the Commanding General, Army Service Forces, attention, Statistics and Progress Branch, Control Division. The

reports required to be filed under § 81.293 should be forwarded so as to be received by the fifth calendar day following the purchase action; the reports required to be filed pursuant to § 81.294 should be forwarded so as to be received by the eighth calendar day following the close of the month. The chiefs of Special Services and Administrative Services will be responsible for complete, accurate and proper submission of reports from stations under their respective jurisdiction.

(f) Reports not to be duplicated. When a "final type" contract is executed covering a previously reported purchase action, no additional Purchase Action Report will be filed. Likewise, a purchase order is to be reported only when it is the original purchase action on the item in question; and a purchase order is not to be reported when it is an order placed against an existing transaction previously reported as a purchase action.

(g) Matters not to be reported. Pay of individuals' shipping and traveling expenses, etc. are not to be included in the reports required to be filed under §§ 81.293 and 81.294. The items involved in this category are stated in War Department Circular No. 206, 1942. This paragraph refers only to individuals on a War Department payroll.

(h) Definitions—(1) Purchase action. A purchase action is any transaction (including all types of awards) obligating government funds. A transaction, in this case, includes transactions with any individual, firm, corporation, or governmental agency outside of the jurisdiction of the War Department. The execution of a preliminary contractual agreement is to be regarded as a purchase action unless the undertaking contained therein is conditioned upon funds becoming available, and hence does not obligate government funds (see for example, the letter of intent which was the subject of the decision of the Comptroller General issued under date of December 22, 1941; G-21673).

(2) Service. Notwithstanding the provisions of § 81.108 (d), the term "service" as used in §§ 81.291-81.294 including all supply services, Army Service Forces; the Materiel Command, Army Air Forces; all service commands, Army Service Forces (including the Military Forces; the Materiel Command, Army District of Washington); Special Services, Army Service Forces; and Administrative Services, Army Service Forces, with the exception of the Army Exchange Service.

(3) Preliminary contractual agreements. The term "preliminary contractual agreements" as used in §§ 81.291-81.294 refers to all written agreements which do not obligate War Department funds to the full amount which it is anticipated will finally be obligated (see W. D. Contract Form No. 7, § 81.1307, as one type of such agreement). Such agreement becomes final when the total estimated amount has been fully obligated or a final definitive contract has been executed.

§ 81.292 Responsibility of the chiefs of the supply services and the commanding generals of the service commands.

The chiefs of the supply services (including the Commanding General, Matériel Command, Army Air Forces) and the commanding generals of the service commands (including the Commanding General, Military District of Washington) are charged with the following responsibilities:

(a) Responsibility for assuring that all reports required by this Procurement Regulation No. 2, are prepared by the stations under their jurisdiction and are forwarded to them in accordance with § 81.291 (e). This responsibility includes

(1) Responsibility for ascertaining that purchase action reports are received for all actions entered into, as controlled by the serial number system;

(2) Responsibility for checking by contract number to assure that duplicate reports are not received including the checking of notices and cancellations;

(3) Responsibility for reconciling individual purchase action reports submitted by each station with the monthly reports submitted by such station.

(b) Responsibility for the preparation, typing, checking, and distribution of the daily report on procurement (daily log). The Statistics and Progress Branch, Control Division, Headquarters, Army Service Forces, will advise as to the form and distribution of this report.

(c) Responsibility for the preparation of individual strips for all purchase actions in excess of \$150,000. From these strips arranged in alphabetical order, pages will be made up for a quarterly report. These pages will be submitted to the Statistics and Progress Branch for reproduction and final compilation of the report required to be filed with Congress pursuant to Public Law 528, 77th Congress. That Branch will advise as to the form and time schedule of these strips.

(d) Responsibility for submitting to the Statistics and Progress Branch, Control Division, Headquarters, Army Service Forces, recapitulations of the monthly summaries submitted by the stations under their jurisdiction as well as recapitulations of the individual purchase action reports submitted by such stations. The Statistics and Progress Branch will advise as to the time schedule and form of these recapitulations.

(e) Responsibility for obtaining detailed information on specific transactions when the same is deemed necessary.

(f) Responsibility for the reproduction of the original signed purchase action report and for forwarding four copies to the Department of Labor, Washington, D. C., attention Wages and Hours Division. The transmittal of such copies will relieve the contracting officers of filing the present Department of Labor Form P. C. 1. This will become effective with reports received May 1, 1943, and thereafter. As many additional copies may be reproduced as directed by the chief of the service concerned.

(g) The Statistics and Progress Branch, Control Division, Headquarters, Army Service Forces, retains, despite the decentralization of some of the operating functions, full authority pertaining

to the purchase action reporting requirements of these regulations.

§ 81.293 *Reports of purchase actions exceeding \$10,000.* A report of every original purchase action which exceeds \$10,000 (actual or estimated) in amount will be made on an 8" x 10½" sheet and forwarded through the offices of the chiefs of the various services in accordance with the time schedule (the fifth calendar day following the purchase action) and procedure stated in § 81.291 (e). Reports should be made on the form set forth below:

WAR DEPARTMENT

Station	Date.....
Address	
(1) Purchase Action Report Serial No.....	
(3) Station No.....	
Subject: Report of Negotiated Purchase in Excess of \$10,000	
Station Supply Service	Number Date of Award (or Service Command)
(6) Contract..... Contracting as	
(4) Contractor.....	Mfg. <input type="checkbox"/> Dealer <input type="checkbox"/>
(5) Work Performed at..... (Name and location)	
Type of (8) Delivery to start To be Completed	
(7) Purchase Action.....	

(9 & 11) Description of item	No. of units	Unit cost	Total cost (If estimated so indicate)

(10) Preference Rating..... Identification Symbol.....
 (12) If Escalator Clause is included in Contract, state whether such clause is for Labor, Materials, or both.....
 (13) Check if this Contract is subject to Walsh-Healey Public Contracts Act

The..... Industry Minimum Wage Determination of The Secretary of Labor is applicable to this Purchase Action (Indicate industry by title) Date Poster (PC 13) sent to Contractor.....

If the estimated initial value of the contract is in excess of \$150,000 the following information must also be submitted:

(14) (a) Negotiators for Government.....
 (b) Negotiators for Contractor.....
 (c) Reasons for selecting Contractor..... (If no competition was obtained)
 (d) Name of Person approving specification. (Where Federal, Army, Supply Service, Navy, or other bureau specification is used, a statement to that effect is sufficient.)
 (e) In reporting purchase of land, the following information must be submitted:
 (1) Location.....
 (2) Area.....
 (3) Intended Use.....
 (4) Price.....
 (5) Assessed Value.....
 Signature.....
 Name.....
 Rank.....

Copy Distribution:
 1 Chief, Responsible Service.
 1 Your file.

(a) *Explanation of report form for purchase actions exceeding \$10,000.* The following notes apply to the report form set forth in above. It will be noted that the report form contains cross references to these notes.

(1) Each station will begin with serial No. 1 for the new fiscal year and continue in exact sequence (based on the date of award as established in subparagraph (6) of this paragraph) to the end of the fiscal year. Purchase action re-

ports made in the new fiscal year for awards made in the previous fiscal year should have a serial number in the series of the previous fiscal year.

(2) This note has been deleted.

(3) Include name of station, location and station number.

(4) Name and address of contractor. If more than one, list each one as a split award on separate purchase action reports.

(5) Name and location of establishment or plant or location where work will be performed. If more than one, list each one. If this is same as contractor, so indicate.

(6) Under the headings "Station", "Supply Service" and "Number" indicate the contract (purchase action) number in accordance with the system specified in § 81.309 (b) or § 81.318 (e) of these procurement regulations. When purchase orders are required to be reported (see § 81.291 (f)), the number thereof will be shown under this item of the form. The date shown will be the date shown on the original agreement as established by the transmission of the document from the contracting officer to the contractor. It will be the date of the award of the agreement and not necessarily the date of the acceptance. In the event that a preliminary agreement (as defined in subparagraph (3) of § 81.291 (h)) is first executed and is subsequently superseded by a definitive agreement, the date shown will be the date of the preliminary agreement and not the date of the definitive agreement. If a purchase order is the original purchase action (see § 81.291 (f)), use the Symbol P. O. and its serial number rather than the contract number. If the purchase order was issued by a service command, the service command symbol indication will be shown following the serial number in parenthesis.

(7) Indicate whether lump sum, unit price, cost-plus-a-fixed-fee, etc. If the transaction being reported is evidenced by a preliminary agreement (as defined in subparagraph (3) of § 81.291 (h)) indicate also by word "preliminary".

(8) For construction, this means work to begin, etc. For real estate, this means date of possession. The starting date may be the same as the completion date; and the starting date or both the starting date and completion date may be the same as the date of award. Where dates are dependent upon receipt of material estimated dates are permissible but will be so indicated.

(9) Complete description of product, service, facilities, project or property. Long lists of items attached to Purchase Action Reports are not required for centralized reporting unless specifically directed by the chief of the service responsible for procurement of the item involved. Where assorted items of like nature are reported, indicate group headings such as: various engine parts, various knit clothing, etc. If item or service is classified state description but so label whole report, and transmit according to regulations, covering classified information. If the purchase transaction being reported is the execution of

a cost-plus-a-fixed-fee contract, indicate the full estimated cost (not including the fixed-fee) in the description column. If the purchase transaction being reported is evidenced by a preliminary agreement under which the Government only obligates itself for a percentage of the anticipated total contract price, the anticipated full contract price should be shown under the heading "Description of Item".

(10) For the preference rating, the WPB priority rating (AAA, AA-1, A-1-a, AA-2x, etc.) will be shown. It is anticipated that sometime in the future, the use of the Federal Standard Stock Catalog number will be required as the identification symbol.

(11) Number of units, unit cost and total cost. If cost is estimated, write "estimated" after amount. For purchase actions involving architect-engineer or similar services, only indicate as the total cost, the amount payable to the individual contractor and chargeable against a War Department appropriation. This applies primarily to cost-plus-a-fixed-fee contracts. If on such a contract the contractor has, besides the architect-engineer, management, or similar fee, a portion or all of the work to perform, each fee will be separately shown from the other items. The total obligated amount will also be shown for this purchase action. In cases where land acquisition, plant expansion, tool expansion and supply items are involved on a single purchase action, a distribution by these groups and a total cost will be shown. If the purchase action is a preliminary contractual agreement, (see subparagraph (3) of § 81.291 (h)), the amount for which the War Department is obligated will be shown as the total cost. In cases where a varied group of items are shown in the description section of the report and not detailed, indicate various unit prices in the same manner. Indicate this assortment either as a price range, i. e., \$4.37 to \$4.69 ea., or show the word "various" for a wide range of unit prices such as on tools. In all cases a total cost (actual or estimated) will be shown. This includes purchase actions for utilities or other "open-end" contracts.

(12) State when an escalator clause is included in the contract and whether such clause is for labor, materials or both.

(13) Reporting provisions of the Walsh-Healey Act (Act of June 30, 1936; 41 Stat. 2036; 41 U.S.C. 35-45) will, after May 1, 1943, be fulfilled by the submission of the report called for under § 81.293. If any provision of that Act is applicable to the purchase action, the box should be checked as indicated. If the purchase action comes under any provision of the Act, the industry involved should be indicated on the second line of this item. On the third line there should be indicated the date on which the poster (P.C. 13) was sent to the contractor and to the plant locations.

(14) Where total value of purchase action is in excess of \$150,000.00 additional data is required as shown on form (§ 81.293).

(b) *Reports of increased purchase actions not originally reported.* When a purchase action, which originally was not reported because it involved a total cost of not more than \$10,000 is increased to an amount in excess of \$10,000, a Purchase Action Report will be made on the form set forth in § 81.293 showing the new net value of the purchase action and the date on which the agreement exceeded \$10,000. See § 81.294 (a) for method of treating such purchase actions in monthly summary reports.

(c) *Cancellation and supplemental reports.* (1) A purchase action report form will be used to report cancellation and supplemental actions as stated below. This form will be identical with the form shown in § 81.293, except that the words "Net Change" will be substituted for "Total Cost", and will be prepared on blue stock. Such report will be submitted for each change within the time schedule (5 calendar days after the action) and in accordance with the procedure stated in § 81.291 (e). This report will contain the same serial number as the original purchase action report followed by a letter of the alphabet in parentheses; the first such change using the letter (a); the second (b); etc.

(2) If a purchase action report has been submitted under § 81.293 and § 81.293 (b) and subsequently canceled, completely canceling the value of the purchase action, the action will be reported as above.

(3) In case a previously reported individual purchase action has been decreased so that the net value is below \$10,000, a blue report will be submitted showing a net change figure equal to the previously reported figures, not merely the amount of the decrease. For this regulation, changes of this type will be considered as a cancellation because only purchase actions having a net value in excess of \$10,000 are reportable. Cancellations that do not reduce the contract price to \$10,000 or less will not be reported as cancellations even though the quantity may have been reduced to zero.

(4) Changes (increase or decrease) of a previously reported purchase action will be reported as above when the change is in excess of \$1,000. Changes resulting from renegotiation will be included. The report will be on the basis of the net increase or decrease (state which) and not the revised total cost of the purchase action.

(5) Changes (increase or decrease) of \$1,000 or less on purchase actions previously reported, which had a value in excess of \$10,000, will not be reported in the above manner. A summary of such smaller changes (including changes resulting from renegotiation) will be included in report required under § 81.294. The net change figure reported for cancellations, as stated above, will include any of these smaller changes applying to the purchase action being canceled.

(6) In the case of an "open end contract", the original purchase action report will have indicated the estimated quantity and value as of the award date. Any changes during the life of the award

will be submitted as indicated above. As of the termination date, an additional report will be submitted adjusting any unreported quantity and value (whether it be an increase or decrease).

§ 81.294 *Monthly summary of purchase actions.* A summary of all purchase actions will be rendered for each calendar month as of the last day thereof and submitted on an 8" x 10 1/2" sheet through the offices of the chiefs of the various services in accordance with the time schedule (5 calendar days after close of the month) and procedure stated in § 81.291 (e) (on the basis of net obligations undertaken during the month and not appropriations authorized). The form set forth below will be used for all reports submitted following the submission of the reports covering the month of April 1943. Accordingly the reports submitted in June covering purchase actions in May and any unreported activity for previous months will be on the new form.

(1) Station _____ (2) Date of Submittal _____, 19____

(3) Transactions not previously reported for month of _____

(4) Reported through _____

Subject: Summary Report of Purchase Actions in Excess of \$10,000.

(5) Value of Negotiated Purchase Actions.

a. Original Awards _____

b. Cancellations _____ (Decrease)

c. Changes and Supplements Reported on Blue Purchase Action Reports _____

d. Changes and Supplements Not Reported on Blue Purchase Action Reports _____

e. Net Total _____

(6) Number of Negotiated Purchase Actions.

a. Original Awards _____

b. Cancellations _____ (Decrease)

c. Net total _____

(7) Signature _____

Name _____

Rank: Service _____

(a) *Explanation of monthly summary of purchase actions.* (1) Indicate station name, number and location.

(2) Record date submitted.

(3) The month in which the action took place will be shown. A separate monthly summary will be required for each month in which purchases actions, that have not been previously reported, were awarded. The award date of the supplement cancellation or change is the determining month and not the date of the original award.

(4) Where a particular post, camp or station has purchases during a period coming under the jurisdiction of more than one service, separate monthly summary reports will be submitted to each service according to instructions included in § 81.291 (e), but said reports will not contain duplicated entries. Indicate service to which submitted (see § 81.291 (e)).

(5a) Include all purchase actions previously reported whose value (not quantity) was cancelled in their entirety during the month shown in item (3) as well as the full previously reported value (including all previous changes) of purchase actions that have been reported as being in excess of \$10,000 and which by

this change during the month shown in item (3) decreases the net value to \$10,000 or less.

(5b) [No explanation for item (5b) in original document.]

(5c) Include value of supplements or changes made during the month shown in item (3) and which had a value in excess of \$1,000 and were reported on blue purchase reports as described in § 81.293 (c).

(5d) Include value of supplements or changes made during month shown in item (3) and which had a value of \$1,000 or less and were not reported on blue purchase action reports as described in § 81.293 (c).

(5e) Show the net total of items 5a, 5b, 5c and 5d. (5c, 5d or 5e may be an increase or decrease. Indicate which.)

(6a) Show the number of purchase actions represented by the dollar value shown in item (5a).

(6b) Show the number of purchase actions represented by the dollar value shown in item (5b).

(6c) Show the net total of items 6a and 6b. (The number of purchase actions to be shown is only for original awards reported (5a) and cancellations (5b). The counts of purchase actions whose value is shown as items 5c and 5d will never be included.)

(7) Fill in signature, name, rank and service.

(b) *Negative reports.* In case where no activity is shown for the current month a negative report will be submitted. Where a station has been terminated a report will be submitted indicating that such report is final.

CONTRACTS

GENERAL

Subparagraphs (3) and (4) of § 81.302 (c) are amended as follows:

§ 81.302 Definitions. * * *

(c) *Contracting officer.* * * *

(3) Representatives may be designated as follows:

(i) The chief of a supply service may designate any officer or civilian official to act as representative of the contracting officer or his duly appointed successor;

(ii) A commanding officer may designate any contracting officer assigned to his command or station to act as representative of any other contracting officer assigned to the same command or station, or of a contracting officer's duly appointed successor so assigned;

(iii) A contracting officer, his duly appointed successor, and any representative designated pursuant to (i) or (ii) of this subparagraph (3), may respectively designate any officers or civilian officials to act as their representatives.

(4) A designation authorized by subparagraph (3) may be made by instructions relating to particular contractual instruments or classes of instruments, and may, to the extent not specifically prohibited by the terms of the contractual instrument involved, empower the representative to take any or all action thereunder which could lawfully be taken by the contracting officer. In no event, however, shall a representative

who is not a contracting officer, as defined in subparagraph (1), be empowered to execute any contract or supplemental agreement (as distinguished from change order).

Section 81.303 is amended as follows:

§ 81.303 General requirements for contracts. Every purchase transaction except those where payment is made coincidentally with receipt of supplies will be evidenced by a written contract.

(a) *Types of contracts.* Contracts may be either formal or informal.

(b) *Formal contracts; when required.* A formal contract is one which is contained in one instrument executed by both parties. Formal contracts may be used for any purchase transaction and will be used for all purchase transactions other than those for which informal contracts are authorized by paragraph (c) below.

(c) *Informal contracts; when permitted.* Informal contracts are of two types:

(1) An informal contract consisting of a written instrument signed by the contracting officer on behalf of the United States, and not by the contractor. This type of informal contract may be used for any of the following purchase transactions:

(i) Any transaction the contract price of which does not exceed \$5,000.

(ii) Any transaction the contract price of which exceeds \$5,000 but does not exceed \$100,000: *Provided*, That not more than one payment is involved: *And provided* That the time of performance does not exceed 180 days.

(iii) Any transaction made at public auction at a produce exchange or under similar conditions.

(2) An informal contract embodied in more than one instrument. At least one instrument is signed by the contracting officer on behalf of the United States and at least one other instrument is signed by or on behalf of the contractor. This type of informal contract may be used for any of the following purchase transactions:

(i) Any transaction the contract price of which does not exceed \$5,000.

(ii) Any transaction the contract price of which exceeds \$5,000 but does not exceed \$500,000, provided that the time of performance does not exceed 180 days.

AUTHORITY TO MAKE AWARDS, CONTRACTS, AND MODIFICATIONS THEREOF; REQUIRED APPROVALS

Section 81.304 is amended as follows:

§ 81.304 Definitions — (a) Standard forms of contract. * * *

(1) * * *

(xv) War Department Contract Form No. 14 Government-owned Equipment Rental Agreement. (See § 81.1314.)

(xvi) War Department Contract Form No. 15. Negotiated Electric Service Contract. (See § 81.1315.)

(xvii) War Department Contract Form No. 16 Lump Sum Contract for Architect-Engineer Services With Optional Supervision. (See § 81.1316.)

Section 81.305 is amended as follows:

§ 81.305 Making and approval of awards of contracts, supplemental agreements and change orders. * * *

(b) *Awards requiring the approval of Director, Purchases Division.* (1) The award of all contracts, supplemental agreements and change orders other than those specified in subparagraphs (1) and (2) of paragraph (a) of this section must be submitted for approval to the Director, Purchases Division, Headquarters, Army Service Forces.

(2) If it is desired to execute a preliminary contract, as defined below, with a particular contractor, and the choice of contractor presents no real alternative, it shall not be necessary to obtain any approval pursuant to subparagraph (1) above. Such approval will, however, be obtained prior to the execution of the final definitive agreement, if required by subparagraph (1). The term "preliminary contract", as used in this subparagraph (2), refers to any type of tentative agreement (as, for example, a letter purchase order of the type set forth in § 81.1307) which, it is contemplated, will be subsequently superseded by a final definitive agreement which will obligate War Department funds in an estimated amount at least twice the amount obligated by the tentative agreement.

Section 81.308b is amended as follows:

§ 81.308b Correction of mistakes. Effecting amendment of contracts with the least possible delay to correct misunderstanding, mistakes, errors, and ambiguities will facilitate the prosecution of the war by expediting the procurement program and by giving contractors proper assurance that mistakes unavoidable in a war program as large and extensive as that now in progress, will be corrected expeditiously and fairly. Accordingly, mistakes may be corrected by supplemental agreement pursuant to Title II of the First War Powers Act, 1941, and Executive Order No. 9001, as follows:

(a) Each chief of a supply service, within the time prescribed by § 81.308f, enter into supplemental agreements correcting mistakes found by the chief of the supply service to be of the following types: (1) misunderstandings, mistakes, errors of the parties to a written agreement, or ambiguities therein, which consist solely of a failure to express in the written agreement the true agreement between them in accordance with the negotiations between them, or of a mutual mistake as to a material fact; (2) mistakes and errors of a contractor, even if unilateral which consist solely of the failure of the contractor, in good faith, to set forth in a bid or in a written agreement what he intended to include therein: *Provided*, That notice of the mistake is given by the contractor to the contracting officer at any time before completion of performance or termination of the contract: *Provided further*, That both as to such mutual mistakes and such unilateral mistakes, the effect of any change by such supplemental agreement to correct any such mistakes

does not make an adjustment of \$50,000 or more: *And provided further*, That where such contract was placed as a result of a formal or informal invitation to bid such change shall not result in the payment to the contractor of a sum in excess of the amount of any bid submitted by any other bidder upon substantially the same terms and conditions, except that if the contract was not originally placed on a basis of competition as to price but primarily on the basis of other considerations the limitation contained in this proviso shall not be applicable.

(b) In any other case where the chief of a supply service determines that it will facilitate the prosecution of the war to execute a supplemental agreement to correct a mistake, he will first obtain approval of the Director, Purchases Division, Headquarters, Army Service Forces.

(c) Approval of the Director, Purchases Division, will not be required in the case of any supplemental agreement correcting a mistake, under which the Government receives adequate new legal consideration, regardless of whether the supplemental agreement involves an adjustment amounting to \$50,000 or more, and regardless of the time of execution of such supplemental agreement.

Requests for approval by the Director, Purchases Division, Headquarters, Army Service Forces, of supplemental agreements to correct misunderstandings, mistakes, errors and ambiguities in contracts in accordance with the provisions of this paragraph will be accompanied by a full statement of the circumstances including all relevant papers or copies thereof. The evidence submitted shall show that an error or mistake was made or that a misunderstanding or ambiguity exists, in what it consists, and how it occurred, the true intent of the parties, and the effect of the mistake, if not corrected, upon the financial condition of the contractor. When this paragraph does not require that the approval of the Director, Purchases Division, be obtained, the chief of the supply service approving or executing such agreement will see that a similar statement is prepared with respect to each such supplemental agreement and that such statement and all relevant papers and evidences are carefully preserved. Attention is directed to the provisions of § 81.308g.

Sections 81.308e to 81.308g, inclusive, are added as follows:

§ 81.308e Extension of time for performance. The chief of each supply service may authorize contracting officers designated by him to extend by supplemental agreement within the time prescribed by § 81.308f, the time fixed for performance in any contract and to waive accrued liquidated damages. Each such supplemental agreement shall be entered into pursuant to the First War Powers Act and Executive Order No. 9001. If the contractor shall be in default by reason of delay at the date thereof, such supplemental agreement shall be subject to the approval of the Director, Purchases Division, Headquarters, Army

Service Forces, unless the contracting officer shall find that such delay caused no substantial damage to the Government (as distinguished from the accrual of liquidated damages under the contract). For the purposes of this paragraph, the contractor shall not in any case be considered in default by reason of delay if such delay is excusable within the meaning of the contract. Attention is directed to the provisions of § 81.308g.

§ 81.308f Amendment of contracts after final administrative determination of amount due. The authority granted to the chiefs of the supply services pursuant to §§ 81.308b, 81.308e, 81.379, and 81.380 will not be exercised after the contracting officer has administratively determined the final amount due under the contract by communicating his determination to the contractor or by the approval of a final voucher therefor, except that if the contracting officer's determination is, by the terms of the contract, subject to review by the Secretary of War, or his duly authorized representative, such authority may be exercised at any time prior to final action on such review if the contractor perfects his right to such review. Attention is directed to the provisions of § 81.308g.

§ 81.308g Supplements and change orders dealing with or directly affecting matters pending before the General Accounting Office in respect of the amended contract. Chiefs of supply services may not approve or authorize the execution of any supplemental agreement or change order which deals with or directly affects the claim under the contract amended thereby which has been transmitted to the General Accounting Office, or any dispute under the contract which has been referred to the General Accounting Office. This limitation of authority is applicable to action taken pursuant to §§ 81.306 (c) and (d), 81.308a, 81.308b, 81.308e, 81.379, and 81.380 notwithstanding any authority granted to the chiefs of the supply services by those paragraphs respectively. In requesting any approval of the Director, Purchases Division, Headquarters, Army Service Forces, required by these regulations, the chiefs of the several supply services will call attention to any matters pending before the General Accounting Office with respect to the contract in question, or any closely related contract which may be affected or dealt with by the supplemental agreement, change order, or action, approval of which is requested, and will state fully the circumstances in any such pending matter.

FORMALITIES IN CONNECTION WITH EXECUTION OF CONTRACTS AND MODIFICATIONS THEREOF

Paragraphs (b) and (c) of § 81.309 are amended as follows:

§ 81.309 Numbering contracts. * * *

(b) **System.** Contract numbers will be placed in the upper right-hand corner and will consist of the following in the order named:

(1) The capital letter "W", representing the War Department.

(2) Station number representing the station or office as published in Finance Circulars.

(3) The letter or letters representing the supply service. The Chief of Finance will be promptly notified of any change in the letter symbol or of the adoption of a new symbol.

(4) A serial number, separated from the above by a hyphen, commencing with the number 1 and continuing in succession indefinitely, without regard to the fiscal year. When the serial number reaches the limit of five digits (99,999), a new series will be used beginning with the serial number 1 and followed by the capital letter "A". Should additional series become necessary, they will be distinguished by the capital letters "B", "C", "D", etc., as may be required.

Note: The foregoing applies only to the numbering of supply service contracts and not to the numbering of service command contracts. As to the latter, see § 81.318b (e).

(c) **Examples.** Based upon paragraph (b) above, the following is the number of the first numbered contract executed by the Philadelphia Quartermaster Depot:

W-689qm-1.

Section 81.313 (b) is amended as follows:

§ 81.313 Form of supplemental agreements and change orders. * * *

(b) **Change orders.** (1) Change orders will be in the form of letters addressed to the contractor, and will specify the number of the contract concerned, the changes to be made, the increase or decrease in price and time for performance, and such other terms as may be necessary. Change orders will bear the same identification as the contract which is thereby modified or amended and will be lettered or numbered, whichever method is authorized by the chief of the supply service concerned, in the order in which the modifications or amendments to the contract are issued. One continuous series of lettering or numbering as the case may be will be used for each contract, even though it is modified or amended both by supplemental agreements and by change orders.

(2) In order to avoid the work involved in duplicating change orders, the following procedure may, in the discretion of the chief of the supply service, be adopted with respect to any or all contracts:

(i) Change orders will be classified as primary change orders and secondary change orders.

(ii) Primary change orders are those which specify an increase or decrease in price or make any other material change in the terms of the contract.

(iii) All other change orders (including those in which an increase or decrease in price will be necessitated, but the amount of which is not known at the time of the change order) are secondary change orders.

(iv) Primary change orders will be numbered in accordance with subparagraph (1) above.

(v) Secondary change orders will be given only such identification as the chief of the supply service shall prescribe.

(vi) Secondary change orders will not be included in the continuous series of lettering or numbering referred to in the last sentence of subparagraph (1).

(vii) If a secondary change order is executed and it subsequently becomes apparent that the change made thereby will result in an increase or decrease in price, a supplemental agreement will be executed to evidence such increase or decrease.

**DISTRIBUTION OF CONTRACTS AND ORDERS
THEREUNDER**

Paragraph (b) is added to § 81.317a as follows:

§ 81.317a *Supplemental agreements and change orders.* (a) Signed numbers and copies of supplemental agreements and change orders will be distributed in the same manner as is prescribed for the contracts to which they pertain and the contracting officer will note on his retained copy of the supplemental agreement or change order the date on which the contractor's number was delivered or mailed to him. When, pursuant to § 81.313 (a) (2), a single supplemental agreement is executed to modify more than one contract, the following procedure will be followed:

(1) The original signed number will be forwarded to the General Accounting Office.

(2) The duplicate signed number will be filed with the contracting officer who supervised the execution thereof or with the chief of the supply service concerned and correct copies of the supplemental agreement will be furnished to the contracting officers under all of the contractors affected by the supplemental agreement.

(3) The triplicate signed number will be forwarded to the contractor.

(4) An authenticated copy will be forwarded to the disbursing officer under each contract affected by the supplemental agreement.

(b) If the alternative procedure of numbering change orders provided for in § 81.313 (b) (2) is adopted, only primary change orders will be distributed in accordance with subparagraph (1) above. Secondary change orders will be given only such distribution as the chief of the supply service concerned may prescribe.

CONTRACT PROCEDURE WITHIN THE SERVICE COMMANDS

Sections 81.318a and 81.318b have been redesignated § 81.390 and § 81.391, respectively, and new §§ 81.318a and 81.318b are added as follows:

§ 81.318a *Organization of service commands—(a) Functions of the service commands.* The Commanding Generals of the service commands are the direct subordinates of the Commanding General, Army Service Forces, and are his field representatives for the performance of the administrative, housing, house-keeping, hospitalization, and supply functions assigned to them. (See § 403.01 of the Services of Supply Organization Manual.)

(b) *Relationship between the service commands and the supply services.* The

former offices of the special staff (including the quartermaster, engineer, ordnance officer, and signal officer) are under the complete jurisdiction of the Commanding General of each service command, and are an integral part of his headquarters; such offices are not to be considered field offices or agencies of the supply services. The supply services act as staff agencies of the Commanding General, Army Service Forces, for the functions assigned to them in directing and supervising those functions in the service commands. Accordingly, they may issue instructions to the Commanding Generals of the service commands in their own names or under the authority of the Commanding General, Army Service Forces, but they may not exercise direct command of the subordinates in the headquarters of a Commanding General of a service command (including the quartermaster, engineer, ordnance officer, and signal officer). (See § 403.02 of the Services of Supply Organization Manual.)

§ 81.318b *Contract procedure—(a) Appointment of contracting officers.* Commanding Generals of service commands are authorized to appoint contracting officers. Contracting officers so appointed may execute service command contracts as that term is defined in paragraph (b) below, as well as supply service contracts executed on behalf of a supply service as set forth in paragraph (c) below.

(b) *Service command contracts.* All contracts which are executed within a service command and which are to be paid for with funds made available to the Commanding Generals of the service commands by the Commanding General, Army Service Forces, are to be regarded as service command contracts and not the contracts of any supply service. There appears to be considerable confusion in this matter when contracts are executed by the quartermaster or the signal officer on the staff of a Commanding General of a service command. The tendency seems to exist to regard such contracts as Quartermaster Corps or Signal Corps contracts, as the case may be. As pointed out in § 81.318a (b) the quartermaster and the signal officer at a post, camp, or station within a service command are under jurisdiction of the Commanding General of the service command and are not to be regarded as subordinates of the chief of any supply service. Contracts executed under the complete supervision of the service commanders and which are not financed with funds furnished directly by the supply services are also to be regarded as service command contracts. An illustration is contracts for the employment of contract surgeons (see paragraph 1, section II, Circular No. 206, War Department 1942).

(c) *Supply service contracts executed by service commands.* Frequently contracting officers within the service commands are requested to execute contracts on behalf of a supply service, and it is understood that such contracts are to be paid for out of supply service funds.

Likewise, when a given item is not available at a depot, a representative of a service command may be given sufficient funds by the supply service to enable the service command to purchase the item in question. All such contracts, being financed with supply service funds and not with the funds made available to the service command by the Commanding General, Army Service Forces are to be regarded as supply service contracts and the contracting officer of the service command, in executing such contracts, is merely acting as agent for the supply service on whose behalf the contract is executed. As indicated in paragraph (a) of this section above, however, the authority of the contracting officer of the service command includes authority to execute such a supply service contract.

(d) *Distribution of service command contracts.* The provisions of §§ 81.315-81.318 are applicable to service command contracts. It is to be noted, however, that whenever any paragraph of that section requires a contract to be filed with the "chief of the supply service concerned" the intention is that it be filed with the Commanding General of the service command (See § 81.108 (e).) It is important that no service command contract (as that term is defined in paragraph (b) of this section) be forwarded to the Headquarters of the various supply services for filing.

(e) *Numbering of service command contracts.* (1) Contract numbers will be placed in the upper right-hand corner of service command contracts and will consist of the following in the order named:

(i) The capital letter "W", representing the War Department.

(ii) The station number, that is, the station or office as published in Finance circulars.

(iii) A symbol in parentheses to indicate the service command. This symbol will consist of the capital letters (S. C.) followed by a hyphen and a Roman numeral indicating in which service command the contract was executed. It is important that capital letters followed by periods and by the Roman numeral be used in order that no confusion will arise with Signal Corps contracts which bear the symbol "sc".

(iv) A serial number separated from the above by a hyphen, commencing with the number "1" and continuing in succession indefinitely without regard to the fiscal year.

(2) It is to be emphasized that the numbering procedure set forth in this paragraph is applicable only to service command contracts (as the term is defined in paragraph (b) of this section). When supply service contracts are executed within a service command (see paragraph (c) of this section), such contracts should be numbered as supply service contracts in accordance with the provisions of § 81.309 (b).

(3) It is desirable that a separate series be commenced for service command contracts (as defined in paragraph (b) of this section). This should be done not later than April 20, 1943. Supply service contracts executed by service commands will be continued in the old series.

(f) *Example.* Based upon paragraph (e) above, the following is the number of the first numbered contract executed at Fort Bragg, North Carolina: W-159 (S. C.-IV)-1. The foregoing is on the assumption that the contract is to be paid with funds allotted to the Fourth Service Command by the Commanding General, Army Service Forces.

GUARANTEES, LOANS AND COMMITMENTS, AND ADVANCE PAYMENTS

In § 81.321 (n) subparagraph (1) is rescinded and subparagraphs (2), (3), and (4) are redesignated (1), (2), and (3), respectively, as follows:

§ 81.321 Advance payments. * * *

(n) *Reports.* In connection with advance payments, the supply services will make the following reports:

(1) *Individual advance payment report.* * * *

(2) *Quarterly report.* * * *

(3) *Interim reports.* * * *

MANDATORY AND OPTIONAL CONTRACT PROVISIONS

Section 81.338 is amended as follows:

§ 81.338 Plant protection clauses. In those cases where the Contracting Officer deems it necessary to retain some control as to the plant protective devices in a particular plant, the contract will contain a clause substantially similar to one of those set forth below. Such a clause will not normally be necessary in construction contracts.

Section 81.340 is amended as follows:

§ 81.340 Clauses for rental of gas cylinders. Every contract for the rental of gas cylinders will contain a clause substantially similar to one of the following:

Section 81.341 is amended as follows:

§ 81.341 Price adjustment based on production experience. The following articles provide for redetermination of price by formula (paragraph (a) of this section), price revision by negotiation (paragraph (b)), conversion of fixed-fee contract to fixed price basis (paragraph (c)), and incentive provisions in fixed-fee contracts (paragraph (d)). They may be used in accordance with the instructions in §§ 81.1220-81.1226.

(a) Redetermination of price by formula.

Article * * *. Redetermination of price by formula—(a) Agreement to redetermine price. The Government and the Contractor recognize that the costs of performing this contract cannot be accurately estimated at the time of its execution, and that the price fixed in Article * * * may therefore be too high. They therefore agree that the contract price fixed in Article * * * shall be redetermined in accordance with this Article on the basis of the actual experience of the Contractor in performing part of the contract. They agree that the cost of producing the first ____% of the items called for hereunder (hereinafter called the "preliminary run") will not necessarily be typical for the remainder of the contract. The cost of producing the next ____% (hereinafter called the "test run") shall therefore be used as the general basis for the redetermination of price.

(b) Estimate of costs. The Contractor represents that the contract price fixed in

Article * * * is based on a total estimated cost of \$____, itemized as follows:¹

A. Factory Cost

1. Direct materials.
2. Direct productive labor.
3. Direct engineering labor.
4. Miscellaneous direct factory charges.
5. Indirect factory expenses² (State basis of allocation)

Total Factory Cost

- B. Other manufacturing cost.

- C. Miscellaneous direct expenses.

- D. Indirect engineering expenses.

E. Expenses of distribution, servicing and administration.

F. Guarantee expenses.

(c) Cost statements. (1) Within _____ days after the completion of the production of the "test run" the Contractor shall submit to the Contracting Officer the following data—

(i) Separate statements showing the costs of producing the "preliminary run" and the "test run" itemized in the same way as the estimated cost stated in section (b) above:

(ii) Estimates of the cost of producing the items to be delivered during the remainder of the contract based upon the previous cost experience of the Contractor and upon all other relevant factors; and

(iii) Proposed revised prices under the contract.

(2) The Contractor will maintain books, records and accounts so as to reflect accurately and segregate clearly the costs of performing this contract during the "preliminary run" and "test run." For this purpose the Contractor may follow the cost accounting system regularly used by it, if the Contracting Officer finds it is adequate and in accordance with sound accounting practice. The statements showing costs experienced by the Contractor under this contract shall be based upon such books, records and accounts and shall be certified as correct by two officers of the Contractor or by an independent public accountant. The Contractor shall submit his books, records and accounts to such examination and audit as the Contracting Officer may request.

(d) Method of redetermination. (1) Upon the filing of the data required by section (c) hereof, the Contracting Officer and the Contractor shall determine the costs of producing the "preliminary run" and the "test run" and the cost of producing the remainder of the items called for by the contract as indicated by the cost of production of the "test run" and the cost estimate submitted by the Contractor under section (c). Any disagreement as to the experienced costs or estimated costs shall be subject to Article * * * (Disputes).

(2) If the cost of producing the "preliminary run" and the "test run" plus the cost of production of the remainder of the items called for by the contract as determined under subsection (1) above, is less than the total estimated cost stated in section (b), the total price to be paid pursuant to Article * * * shall be reduced by the amount of the difference. The redetermined price shall be evidenced by a supplemental agreement.

(e) Payment. Pending the redetermination of the contract price hereunder the Government shall pay for all items delivered hereunder at the price fixed in Article * * *. Upon the redetermination of the price hereunder the Contractor shall apply as a credit against payment for subsequent deliveries or shall repay to the Government, as the Contracting Officer may direct, an

¹ This breakdown may be altered to suit particular circumstances. Any reserves for contingencies should be stated separately and clearly identified.

² State separately the estimated amount of each of the following items included:

(a) Normal depreciation

(b) Special amortization.

amount equal to the difference between the price paid on all items theretofore delivered and the redetermined price for such items; and the Government shall pay for all items thereafter delivered the redetermined price minus any such credit. If, before the price is redetermined hereunder, any amount paid under this contract has been included in any renegotiation agreement made under section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, no refund or credit shall be required hereunder with respect to that amount.

(f) Renegotiation. Any redetermination of the contract price made under this Article is without prejudice to the determination of any excessive profits of the Contractor upon subsequent renegotiation under section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, or the contract article inserted herein pursuant to that Act.

(b) Revision of entire price by negotiation.

Article * * * Revision of entire price by negotiation—(a) Agreement to revise price. The Government and the Contractor recognize that the costs of performing this contract cannot be accurately estimated at the time of its execution and that the contract price fixed in Article * * * may therefore be either too high or too low. They therefore agree that the contract price shall be revised upward or downward in accordance with this article on the basis of actual experience of the Contractor in producing ____% of the items under this contract (hereinafter called the "trial run"). They recognize that the costs of performing that part of the contract will not be typical for the remainder of the contract, but will provide sufficient information and experience to permit revision of the price.

(b) Estimate of costs. The Contractor represents that the contract price fixed in Article * * * is based on a total estimated cost of \$____, itemized as follows:¹

A. Factory Cost.

1. Direct materials
2. Direct productive labor
3. Direct engineering labor
4. Miscellaneous direct factory charges
5. Indirect factory expenses² (State basis of allocation)

Total Factory Cost

- B. Other manufacturing cost.
- C. Miscellaneous direct expenses.
- D. Indirect engineering expenses.
- E. Expenses of distribution, servicing and administration.

F. Guarantee expenses.

(c) Cost statements. (1) Within _____ days after the completion of the trial run, the Contractor shall submit to the Contracting Officer the following data:³

¹ This breakdown may be altered to suit particular circumstances. Any reserves for contingencies should be stated separately and clearly identified.

² State separately the estimated amount of each of the following items included:

(a) Normal depreciation

(b) Special amortization.

³ Where it will be unduly difficult for the Contractor to submit the data in the form specified in paragraphs (1) and (ii), the following form may be substituted for these paragraphs, if the Contracting Officer is satisfied that it will provide reliable and sufficient data for the purposes of the article:

(i) Revised estimates of the cost of performing the entire contract, based upon the cost experience of the Contractor during the trial run and upon all other relevant factors, itemized in the same way as the estimated cost stated in section (b) above, and showing separately any reserves for contingencies included in the estimate.

Paragraph (iii) will then be renumbered (ii).

(1) Separate statements showing costs of production for the trial run, itemized in the same way as the estimated cost stated in section (b) above.

(ii) Estimates of the cost of producing the items to be delivered during the remainder of the contract based upon the previous cost experience of the Contractor and upon all other relevant factors.

(iii) Proposed revised prices under the contract.

(2) The Contractor will maintain books, records and accounts so as to reflect accurately and segregate clearly the costs of performing this contract. For this purpose the Contractor may follow the cost accounting system regularly used by it, if the Contracting Officer finds it is adequate and in accordance with sound accounting practice. The statements showing costs experienced by the Contractor under this contract shall be based upon such books, records and accounts and shall be certified as correct by two officers of the Contractor or by an independent public accountant. The Contractor shall submit his books, records and accounts to such examination and audit as the Contracting Officer may request.

(d) *Negotiation for revision.* (1) Upon the filing of the data required by section (c) hereof, the Contractor and Contracting Officer shall negotiate in good faith to agree upon revised prices under this contract. The revised price may be different for different periods of the contract and may be in excess of or less than the price stated in Article * * * hereof. The agreement reached shall be evidenced by a supplemental agreement to this contract stating the revised price under the contract.

(2) If the Contracting Officer and Contractor fail to agree on revised prices under the contract within thirty days after the date for filing of the data by the Contractor under section (c) hereof, or such further period as may be fixed by agreement, the Contractor, if not in default, or the Government, may terminate the contract hereunder by written notice delivered within ten days after the expiration of said thirty day period or extension. Upon such termination by either party, the rights and obligations of the parties shall be governed by the provisions of Article * * * hereof ("Termination for the Convenience of the Government"), except that the Contractor shall be allowed no profit for any uncompleted portion of the contract. If revised prices are not agreed upon and the contract is not terminated, the Government shall pay to the Contractor the price fixed in Article * * * for the remainder of the contract.

(e) *Payments.* Until the contract price is revised hereunder, the Government shall pay to the Contractor the price set forth in Article * * * for all articles delivered. If the contract price is revised upward hereunder, the Government shall pay to the Contractor the difference between the prices paid on all items theretofore delivered and the revised price for such items. If the contract price is revised downward hereunder an amount equal to the difference between the price paid on all items theretofore delivered and the revised price for such items, shall be applied as a credit against payments for subsequent deliveries or shall be applied in such other manner or repaid to the Government, as the Contracting Officer may direct. For all items delivered after any price revision hereunder, the Government shall pay the contractor the revised price, minus any such credit. If, before the price is redetermined hereunder, any amount paid under this contract has been included in any renegotiation agreement made under section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, no refund or credit shall be required hereunder with respect to that amount.

(f) *Renegotiation.* Any revision of the contract price made under this Article is without prejudice to the determination of any excessive profits of the Contractor upon subsequent renegotiation under section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, or the contract article inserted herein pursuant to that Act.

(c) *Conversion to fixed price contract.*

Article * * *. *Conversion to fixed price contract.* (a) The Government and the Contractor agree to convert this contract from a cost-plus-a-fixed-fee basis to a fixed price basis in accordance with this article.

(b) Within fifteen (15) days after the production of --% of the items covered by this contract, the Contractor will submit to the Contracting Officer the following data:¹

(1) Statements showing the cost of producing all items theretofore completed for delivery for which cost figures are available, and such other statements as the Contracting Officer may require.

(2) Estimates of the cost of producing the remainder of the contract based upon the previous cost experience of the Contractor and upon all other relevant factors.

(3) Proposed prices for the items theretofore delivered and to be delivered during the remainder of the contract.

(c) Upon the filing of the data required by section (b) hereof, the Contractor and Contracting Officer will negotiate in good faith to agree upon a price or prices for this contract on a fixed price basis. In negotiating such prices consideration may be given to all pertinent factors which have affected the Contractor's costs during the preceding period and which are likely to affect such costs during the remainder of the contract and to all pertinent factors bearing upon the profit margin which is reasonable for the contractor to earn under the contract. The agreement to convert may make the fixed price basis applicable to the entire contract, including performance before as well as after the effective date of the conversion; and it may provide for the treatment of any advance payments and reimbursements theretofore made to the Contractor as payments under the revised contract, for appropriate credit for deliveries theretofore made by him, and for releasing to the Contractor any interest or title of the Government in any materials and property acquired for the performance of the contract. The terms of the agreement shall be evidenced by a supplemental agreement.

(d) Any conversion made or contract price fixed under this Article is without prejudice to the determination of any excessive profits of the Contractor upon subsequent renegotiation under section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, or the contract article inserted herein pursuant to that Act.

(d) *Adjustment of fixed fee.*

Article * * *. *Adjustment of fixed fee—(a) Agreement to adjust.* The Government

¹ Where it will be unduly difficult for the Contractor to submit the data in the form specified in paragraphs (1) and (2), the following form may be substituted for these paragraphs, if the Contracting Officer is satisfied that it will provide reliable and sufficient data for the purposes of the article:

(1) Revised estimates of the cost of performing the entire contract, based upon the cost experience of the Contractor during the trial run and upon all other relevant factors, itemized in the same way as the estimated cost stated in section (b) above, and showing separately any reserves for contingencies included in the estimate.

Paragraph (3) will then be renumbered (2).

and the Contractor agree that the fee fixed in Article * * * hereof shall be adjusted in accordance with this Article. In this Article the first ____% of the items to be produced hereunder is called the "preliminary run"; the next ____% thereof is called the "test run" and all items to be produced hereunder after the test run are called the "remainder of the contract".

(b) *Basis of Adjustment.* (1) Within ____ days after the production of the test run the Contractor shall submit to the Contracting Officer the following data:

(1) Separate itemized statements showing the costs of production of the preliminary run and the test run.

(ii) Estimates of the costs of producing the remainder of the contract, based upon the previous cost experience of the Contractor and all other relevant factors.

(2) Upon the filing of the foregoing data, the Contracting Officer and Contractor shall agree upon an estimate for the cost of producing the remainder of the contract (herein called the "target estimate") on the basis of the costs of production of the test run and the estimated costs submitted by the Contractor.

(c) *Adjustment.* (1) Upon the completion of the contract the Contractor shall submit itemized statements of the cost of producing the remainder of the contract. The Contracting Officer, after making such adjustments as he deems necessary therefor, shall determine the amount by which the Contractor had reduced the costs of producing the remainder of the contract below the target estimate by efficiency in buying, production or management or has increased such costs above the target estimate by its inefficiency in these respects. Using the amount of the reduction or increase of costs so determined, he shall compute the percentage of the target estimate which such reduction or increase represents.

(2) The Contracting Officer shall then adjust the fee on the basis of the percentage of such increase or reduction in costs in the following manner.

(1) For each 1% of such reduction in costs up to 10% the fee shall be increased by 1% of the dollar amount of the fee or for each 1% of such increase in costs up to 10% the fee shall be decreased by 1% of the dollar amount of the fee.

(ii) For each 1% of such reduction in costs beyond 10% the fee shall be increased by 2% of the dollar amount of the fee or for each 1% of increase in costs beyond 10% the fee shall be reduced by 2% of the dollar amount of the fee.

In no event shall the fee as adjusted be increased to more than 7% of the original estimated costs or be reduced to less than 1% of the original estimated cost.

(d) *Books and records.* The Contractor will maintain books, records and accounts so as to reflect accurately and segregate clearly the costs of performing this contract. For this purpose the Contractor may follow the cost accounting system regularly used by it, if the Contracting Officer finds that it is adequate and in accordance with sound accounting practice. The statements showing costs experienced by the Contractor under this contract shall be based upon such books, records and accounts and shall be certified as correct by two officers of the Contractor or by an independent public accountant. The Contractor shall submit his books, records and accounts to such examination and audit as the Contracting Officer may request.

(e) *Disputes.* Any disagreement with respect to the amount of the "target estimate" under section (b) (2), or the amount of the reduction or increase in costs under section (c) (1), or the computation of the adjustment of the fee under section (c) (2) shall be subject to Article * * * (Disputes).

Section 81.342 is amended as follows:

§ 81.342 Price renegotiation clauses. The following price renegotiation clauses will be used in accordance with § 81.1201 et seq.

(a) *Form I.*

[Form I] *Renegotiation Pursuant to section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.*

(a) Upon the written demand of the Secretary, at such period or periods when, in the judgment of the Secretary, the profits accruing to the Contractor under this contract can be determined with reasonable certainty, the contract price will be renegotiated to eliminate therefrom any amount found as a result of such renegotiation to represent excessive profits. The demand of the Secretary shall fix a place for renegotiation and a time for commencement thereof not later than one year after the close of the fiscal year of the Contractor within which completion or termination of the contract, as determined by the Secretary, occurs.

(b) The Contractor will furnish to the Secretary such statements of actual costs of production and such other financial statements, at such times and in such form and detail, as the Secretary may prescribe, and will permit such audits and inspections of its books and records as the Secretary may request.

(c) The Government shall retain from amounts otherwise due the Contractor, or the Contractor shall repay to the Government if paid to him, any amount of the contract price found as a result of such renegotiation to represent excessive profits and not eliminated through reductions in contract price or otherwise, as the Secretary may direct.

(d) The Contractor will include in each subcontract made by it under this contract for an amount in excess of \$100,000, the following provisions:

ARTICLE * * * Renegotiation pursuant to section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

(1) Upon the written demand of the Secretary, at such period or periods when, in the judgment of the Secretary, the profits accruing to _____ under this contract

(subcontractor)

can be determined with reasonable certainty, the Secretary and _____

(subcontractor)

will renegotiate the contract price [or fixed-fee hereunder] to eliminate therefrom any amount found as a result of such renegotiation to represent excessive profits. The demand of the Secretary shall fix a place for renegotiation and a time for the commencement thereof not later than one year after the close of the fiscal year of the subcontractor within which completion or termination of the contract, as determined by the Secretary, occurs.

(2) _____ will furnish to the _____ (subcontractor)

Secretary such statements of actual costs of production and such other financial statements, at such times and in such form and detail, as the Secretary may prescribe, and will permit such audits and inspections of its books and records as the Secretary may request.

(3) Any amount of the contract price [or fixed-fee hereunder] found as a result of such renegotiation to represent excessive profits shall, as directed by the Secretary,

(A) Be deducted by _____ from _____ (contractor)

payments otherwise due to _____ (subcontractor)

Under this contract; or

(B) Be paid by _____ directly to the Government, if paid to him; or _____ (subcontractor)

(C) Be eliminated through reductions in the contract price [or fixed-fee hereunder] or otherwise.

(4) _____ agrees that _____ (subcontractor)

shall not be liable to _____ (contractor)

for or on account of any _____ (subcontractor)

amount paid to the Government by _____ or deducted by _____ (subcontractor)

from payments otherwise _____ (contractor)

wise due under this contract, pursuant to directions from the Secretary in accordance with the provisions of this Article. Under its contract with the Government _____ (contractor)

is obligated to pay or credit to the Government all amounts withheld by it from _____ (subcontractor)

hereunder. _____ (subcontractor)

(5) _____ agrees (a) upon _____ (subcontractor)

direction of the Secretary, to include in any subcontract hereunder sections (1) to (6) inclusive of this Article, and (b) to make no subdivisions of any contract or subcontract for the purpose of evading the provisions of this section, and (c) to repay to the Government the amount of any reduction in the contract price of any such subcontract which results from renegotiation thereof by the Secretary, and which the Secretary directs _____ to withhold from payments otherwise _____ (subcontractor)

due under such subcontract and actually unpaid at the time _____ (subcontractor)

receives such direction.

(6) As used in this Article—

(a) The term "Secretary" means the Secretary of War or any duly authorized representative of the Secretary including the Contracting Officer.

(b) The term "subcontract" means any purchase order or agreement to perform all or any part of the work, or to make or furnish any material, part, assembly, machinery, equipment or other personal property, required for the performance of this contract, unless exempt under or exempted pursuant to section 403 (1) of the Sixth Supplemental National Defense Appropriation Act of 1942 as amended by section 801 of the Revenue Act of 1942.

(c) The terms "renegotiate" and "renegotiation" have the same meaning as in section 403 (b) of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

(d) The term "this contract" means this contract as modified from time to time.

(e) (1) The Contractor agrees to make no subdivisions of any contract or subcontract for the purpose of evading the provisions of this Article.

(2) If any renegotiation between the Secretary and any subcontractor pursuant to the provisions required by section (d) hereof results in a reduction of the contract price or fixed-fee of the subcontract, the Government shall retain from payments otherwise due to the Contractor, or the Contractor shall repay to the Government, as the Secretary may direct, the amount of such reduction which the Secretary directs the Contractor to withhold from payments otherwise due to the subcontractor under the subcontract and actually unpaid at the time the Contractor receives such direction.

(f) As used in this Article—

(1) The term "Secretary" means the Secretary of War or any duly authorized representative of the Secretary, including the Contracting Officer.

(2) The term "subcontract" means any purchase order or agreement to perform all or any part of the work, or to make or furnish any material, part, assembly, machinery, equipment or other personal property, re-

quired for the performance of this contract, unless exempt under or exempted pursuant to section 403 (1) of the Sixth Supplemental National Defense Appropriation Act of 1942 as amended by section 801 of the Revenue Act of 1942.

(3) The term "renegotiate" and "renegotiation" have the same meaning as in section 403 (b) of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

(4) The term "this contract" means this contract as modified from time to time.

(b) *Form II.*

[Form II] *Renegotiation Pursuant to section 403 of the Sixth Supplemental National Defense Appropriation Act as amended, 1942.*

(a) The Contractor will include in each subcontract made by it under this contract for an amount in excess of \$100,000, the following provisions:

ARTICLE * * *. Renegotiation pursuant to section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

(1) Upon the written demand of the Secretary, at such period or periods when, in the judgment of the Secretary, the profits accruing to _____ under _____ (subcontractor)

this contract can be determined with reasonable certainty, the Secretary and _____ will renegotiate _____ (subcontractor)

the contract price [or fixed-fee hereunder] to eliminate therefrom any amount found as a result of such renegotiation to represent excessive profits. The demand of the Secretary shall fix a place for renegotiation and a time for the commencement thereof not later than one year after the close of the fiscal year of the subcontractor within which completion or termination of the contract, as determined by the Secretary, occurs.

(2) _____ will furnish to the _____ (subcontractor)

Secretary such statements of actual costs of production and such other financial statements, at such times and in such form and detail, as the Secretary may prescribe, and will permit such audits and inspections of its books and records as the Secretary may request.

(3) Any amount of the contract price [or fixed-fee hereunder] found as a result of such renegotiation to represent excessive profits shall, as directed by the Secretary—

(A) Be deducted by _____ (contractor) from payments otherwise due to _____ under this contract; or

(B) Be paid by _____ (subcontractor) directly to the Government, if paid to him or _____ (contractor)

(C) Be eliminated through reductions in the contract price [or fixed-fee hereunder] or otherwise.

(4) _____ agrees that _____ (subcontractor)

shall not be liable to _____ (contractor) for or on account of _____ (subcontractor)

any amount paid to the Government by _____ or deducted by _____ (subcontractor)

from payments otherwise due to _____ (contractor)

under this contract, pursuant to directions from the Secretary in accordance with the provisions of this Article. Under its contract with the Government _____ (contractor)

is obligated to pay or credit to the Government all amounts withheld by it from _____ (subcontractor)

(5) _____ agrees (a) upon _____ (subcontractor)

direction of the Secretary, to include in any subcontract hereunder sections (1) to (6) inclusive of this Article and (b) to make no subdivisions of any contract or subcontract for the purpose of evading the provisions of this section, and (c) to repay to the Government the amount of any reduction in the contract price of any such subcontract which results from renegotiation thereof by the Secretary, and which the Secretary directs to withhold from payments (subcontractor) otherwise due under such subcontract and actually unpaid at the time (subcontractor) receives such direction.

(6) As used in this Article—

(a) The term "Secretary" means the Secretary of War or any duly authorized representative of the Secretary, including the Contracting officer.

(b) The term "subcontract" means any purchase order or agreement to perform all or any part of the work, or to make or furnish any material, part, assembly, machinery, equipment or other personal property, required for the performance of this contract unless exempt under or exempted pursuant to section 403 (1) of the Sixth Supplemental National Defense Appropriation Act of 1942 as amended by section 801 of the Revenue Act of 1942.

(c) The terms "renegotiate" and "renegotiation" have the same meaning as in section 403 (b) of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

(d) The term "this contract" means this contract as modified from time to time.

(b) (1) The Contractor agrees to make no subdivision of any contract or subcontract for the purpose of evading the provisions of this Article.

(2) If any renegotiation between the Secretary and any subcontractor pursuant to the provisions required by section (a) hereof results in a reduction of the contract price or fixed-fee of the subcontract, the Government shall retain from payments otherwise due to the Contractor, or the Contractor shall repay to the Government, as the Secretary may direct, the amount of such reduction which the Secretary directs the Contractor to withhold from payments otherwise due to the subcontractor under the subcontract and actually unpaid at the time the Contractor receives such direction.

(c) As used in this Article—

(1) The term "Secretary" means the Secretary of War or any duly authorized representative of the Secretary, including the Contracting Officer.

(2) The term "subcontract" means any purchase order or agreement to perform all or any part of the work, or to make or furnish any material, part, assembly, machinery, equipment or other personal property, required for the performance of this contract, unless exempt under or exempted pursuant to section 403 (1) of the Sixth Supplemental National Defense Appropriation Act of 1942 as amended by section 801 of the Revenue Act of 1942.

(3) The terms "renegotiate" and "renegotiation" have the same meaning as in section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

(4) The term "this contract" means this contract as modified from time to time.

Section 81.351 is amended as follows:

§ 81.351 Price adjustment articles. The price adjustment articles set forth in paragraphs (a) to (c) of this section may be used when it is desired to provide for price and adjustment under certain circumstances.

(a) *Price adjustment for costs of rubber and synthetic rubber.*

*Article * * * Price adjustment for costs of rubber and synthetic rubber.* (a) In the performance of this contract, the Contractor will use the following types and estimated quantities of rubber or synthetic rubber at the following estimated prices:

Total Estimated Type	Estimated Quantities	Estimated Price per Pound	Estimated Price
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(b) The Government, or any of its agencies or instrumentalities, by allocation of material or sources of supply or other action, requires the Contractor to purchase any of such material required for the performance of this contract at a price which is more or less than the above estimated price therefor, the parties will make an equitable adjustment in the contract price for such increase or decrease in the cost of such material to the Contractor, in accordance with section (c).

(c) The Contractor will keep accurate records based on his regular system of inventory accounting, of all such material purchased for the performance of this contract and of the prices paid therefor. After the Contractor has obtained all of such material needed hereunder, he shall promptly submit to the Contracting Officer a statement showing the quantities of such material purchased hereunder and the actual prices paid therefor. The Contracting Officer may agree with the Contractor upon such adjustment, if any, in the contract price hereunder as he deems justified, but no upward adjustment (1) shall be based upon any price for such material in excess of any maximum price established by the Office of Price Administration and in effect at the time of its purchase, or (2) shall exceed the amount of increase in price actually paid by the Contractor, as determined by the Contracting Officer. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined in accordance with Article * * * (Disputes). The adjustment shall be evidenced by a supplemental agreement to this contract.

(b) *Price adjustment for freight costs on allocations.*

*Article * * * Price adjustment for freight costs on allocations.* (a) The Contractor represents that the contract price is based on procuring any steel needed for the performance of this contract from the plant of the _____ Company located at _____ at a net cost to the Contractor of \$_____ per ton for freight.

(b) If as a result of priority or allocation orders by any Government agency the Contractor is unable to procure all or any part of the steel needed for the performance of this contract from that source and is required to obtain all or part of such steel from some other point of origin, the parties will make an equitable adjustment in the contract price for any increase or decrease in freight costs to the Contractor resulting from such change in source, in accordance with section (c).

(c) The Contractor will notify the Contracting Officer within 30 days after it is first required to obtain steel from some other source, or within such further period as the Contracting Officer may allow before the date of final settlement of the contract. The Contractor will keep accurate records, based on his regular system of inventory accounting, of all such material so purchased for the performance of this contract and of the freight paid thereon. After the Contractor has obtained all of such material needed hereunder, he shall promptly submit to the Contracting Officer a statement showing the quantities of such material purchased hereunder and actual freight paid thereon. The Contracting Officer may agree with the Contractor for such adjustment, if any, in the contract price as he deems justified. If the parties fail to

agree upon the adjustment to be made, the dispute will be determined in accordance with Article * * * (Disputes). The adjustment shall be evidenced by supplemental agreement to this contract.

(c) *Price adjustments for changes in delivery schedules.*

*Article * * * Price adjustments for changes in delivery schedules.* (a) If the Government reduces the rate of deliveries hereunder by partial termination for the convenience of the Government, or if, without fault or negligence on the part of the Contractor, the Government or any of its agencies or instrumentalities, by any preference, priority or allocation order, or by any other act, at any time prevents the Contractor from delivering any of the items under this contract in accordance with the delivery schedules then in effect, and such reduction or delay so changes or interrupts the Contractor's schedules of production as substantially to affect the cost of any of the items procured hereunder, the Government will make an equitable adjustment in the contract price and time for performance hereunder.

(b) The Contractor shall assert any claim for adjustment under this Article within thirty (30) days after the date any such reduction is ordered or any such delay first occurs or within such further period as the Contracting Officer may allow before the date of final settlement of the contract. The Contracting Officer may agree with the Contractor upon such adjustment, if any, in the contract price or time of performance hereunder or both, as he deems justified. If the parties fail to agree as to the cause of the delay or upon the adjustment to be made the dispute shall be determined in accordance with Article * * * (Disputes). The adjustment shall be evidenced by a supplemental agreement to this contract.

Two sentences are added at the end of § 81.352 as follows:

§ 81.352 Delays-damages clause. * * *

If desired the portion of paragraph (b) of the above clause, commencing with the word "and" in the fifth line and ending with the word "Contractor" in the fifteenth line of that paragraph, may be eliminated. In such event the "(1)" in the third line of that paragraph will be eliminated, the comma after the word "define" in the fifth line will be changed to a period, and the word "the" in the fifteenth line will be changed to "The".

Section 81.352a is amended as follows:

§ 81.352a Provision for liquidated damages. Except with the permission of the chief of the supply service concerned (which may be granted with respect to contracts individually or by class), or in accordance with general instructions given by him, no contract shall provide for liquidated damages in the event of default. Where a contract provides for liquidated damages and a default takes place, action will be taken, subject to the provisions of §§ 81.308e, 81.379 and 81.380, promptly on behalf of the Government to enforce any remedies available under the contract. So far as possible, such action will be taken in such manner as will prevent the inequitable accumulation of liquidated damages.

Paragraphs (c) and (d) are added to § 81.353 as follows:

§ 81.353 Walsh-Healey Act; representations and stipulations. * * *

(c) *Minimum wage determinations under the Walsh-Healey Act.* In the event that a minimum wage determination has been made for the industry involved, the contract should contain a reference thereto. The following language is suggested:

Minimum wages payable by the Contractor pursuant to the foregoing stipulations are those determined by the Secretary of Labor to be the prevailing minimum wages in the Industry, namely, _____ cents per hour and _____ dollars per week of 40 hours.

In the event that no such determination has been made, it is suggested that a statement to that effect should be inserted in the contract.

(d) *Incorporation by reference of Walsh-Healey Act stipulations.* By Circular Letter No. 12-42, dated January 4, 1943, the Administrator of the Wage and Hour and Public Contracts Divisions of the Department of Labor permitted the incorporation of the Walsh-Healey Act representations and stipulations by reference. Accordingly, notwithstanding the provisions of that portion of this section which precedes paragraph (a), such representations and stipulations may be incorporated by reference. The following language is suggested.

The representations and stipulations required by section 1 of the Act of June 30, 1936 (Walsh-Healey Act, Public No. 846, 74th Congress) to be included in all contracts therein specified are hereby incorporated and made a part of this contract with the same force and effect as if fully set forth in the contract.

If desired, the following sentence may be added:

Such representations and stipulations shall be subject to all applicable regulations, determinations, and exemptions of the Secretary of Labor now or hereafter in effect. (Compare § 353.1).

The provisions of paragraph (c) of this section are applicable whether the representations and stipulations are set forth in full or are incorporated by reference.

In § 81.357 paragraphs (b) and (e) are amended as follows:

§ 81.357 *Tax articles in fixed price (lump sum) contracts.* * * *

(b) *Short form tax article.* In purchase orders and contracts where the estimated time of the performance of the purchase order or contract does not exceed 60 days the following short form of tax article may be employed or a tax article may be omitted. Attention is again directed to the necessity of including in each contract (see § 81.358) suitable provisions to specify any taxes to be excluded from or included in the contract price otherwise than as provided in such tax article.

(e) *Appropriate tax articles.* The Chief of any Supply Service may authorize the omission of the tax articles set forth in paragraphs (a) and (b) of this section from any contract where they are plainly inapplicable or inappropriate. In any class or classes of contracts for services where a major part of the cost of performance consists of payroll expense, e. g., stevedoring contracts, the Chief of any Supply Service may author-

ize the inclusion of a provision for price adjustment in the event of changes in payroll taxes with respect to such services. The form of any such provision in general should be similar to the provision found in paragraph (b) of the tax article set out in paragraph (a) of this section but should not be made applicable to taxes other than those paid with respect to the wages of the employees of the particular contractor.

Section 81.359 is amended as follows:

§ 81.359 *Telephone messages.* Every cost-plus-a-fixed-fee contract will contain a clause substantially as follows:

Telephone messages (including teletype and facsimile, when authorized by the Contracting Officer to be installed) sent by the Contractor or its representatives, in connection with this contract, shall be paid by the Contractor tax free. Such payments by the Contractor shall be accompanied by a tax exemption certificate.

Section 81.360 is amended as follows:

§ 81.360 *Periodic adjustment of price and exemption from renegotiation.* The following articles for periodic adjustment of price will be used in accordance with §§ 81.1240-81.1247.

Section 81.361 is rescinded, the regulations contained therein having been included in § 81.351 (c) and new § 81.361 is added as follows:

§ 81.361 *Short term pricing.* The following article for revision, after part performance, of the contract price for the remainder of the contract may be used in accordance with §§ 81.1230-81.1236.

(a) *Revision of future prices by negotiation.*

Article * * * *Revision of future prices by negotiation*—(a) *Agreement to revise price.* The Government and the Contractor agree that after the delivery of _____ % of the articles hereunder (herein called the "initial period") the contract price fixed in Article * * * shall be revised upward or downward for deliveries after the initial period (called herein the "remainder of the contract") in accordance with this Article.

(b) *Cost statements.* (1) Within _____ days before the completion of the initial period, the Contractor shall submit to the Contracting Officer the following data:

(i) Itemized statements showing costs of production during the preceding part of the initial period.

(ii) Estimates of the cost of producing the items to be delivered during the remainder of the contract based upon the previous cost experience of the Contractor and upon all other relevant factors.

(iii) Proposed revised prices for the remainder of the contract.

(2) The Contractor will maintain books, records and accounts so as to reflect accurately and segregate clearly the costs of performing this contract. For this purpose the Contractor may follow the cost accounting system regularly used by it, if the Contracting Officer finds it adequate and in accordance with sound accounting practice. The statements showing costs experienced by the Contractor under this contract shall be based upon such books, records and accounts and shall be certified as correct by two officers of the Contractor or by an independent public accountant. The Contractor shall submit his books, records and accounts to such examination and audit as the Contracting Officer may request.

(c) *Negotiation for revision.* (1) Upon the filing of the data required by section (b) hereof, the Contractor and Contracting Officer shall negotiate in good faith to agree upon revised prices for the remainder of this contract. The revised price may be different for different periods of the contract and may be in excess of or less than the price stated in Article * * * hereof. The agreement reached shall be evidenced by a supplemental agreement of this contract stating the revised price for the remainder of the contract.

(2) If the Contracting Officer and Contractor fail to agree on revised prices for the remainder of the contract within thirty (30) days after the date for filing of the data by the Contractor under section (b) hereof, or such further period as may be fixed by agreement, the Contractor, if not in default, or the Government may terminate the contract hereunder by written notice delivered within ten days after the expiration of said thirty day period or extension. Upon such termination by either party, the rights and obligations of the parties shall be governed by the provisions of Article * * * hereof ("Termination for the Convenience of the Government"), except that the Contractor shall be allowed no profit for any uncompleted portion of the contract. If revised prices are not agreed upon and the contract is not so terminated, the Government shall pay to the Contractor the price fixed in Article * * * for the remainder of the contract.

(d) *Payments.* Until the contract price is revised hereunder, the Government shall pay to the Contractor the price set forth in Article * * * for all articles delivered after the initial period. If the contract price for the remainder of the contract is revised upward hereunder, the Government shall pay to the Contractor the difference between the price paid on all items delivered after the initial period and the revised price for such items. If the contract price for the remainder of the contract is revised downward hereunder an amount equal to the difference between the price paid on all items delivered after the initial period and the revised price for such items, shall be applied as a credit against payments for subsequent deliveries or shall be applied in such other manner or repaid to the Government as the Contracting Officer may direct. For all items delivered after any price revision hereunder, the Government shall pay the Contractor the revised price, minus any such credit.

(f) *Renegotiation.* Any revision of the contract price made under this Article is without prejudice to the determination of any excessive profits of the Contractor upon subsequent renegotiation under Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, or the contract article inserted herein pursuant to that Act.

Section 81.363 is redesignated § 81.364 and a new § 81.363 is added as follows:

§ 81.363 *Disposition of Government-owned property by contractors.* There may be inserted in any contract a clause substantially as follows:

It is recognized that during the course of the performance of this contract, certain machine tool equipment, processing equipment, manufacturing aids, raw materials, manufactured materials or other materials or facilities which are owned by the Government will be in the custody of the Contractor; and that it may become desirable to have such items transferred to other contractors having war contracts. Accordingly, whenever the Contracting Officer shall so direct, the Contractor shall, and is hereby authorized on behalf of the Government to, sell, transfer or otherwise dispose of any such machine tool equipment, processing equipment, manufac-

turing aids, raw materials, manufactured materials or other materials or facilities to any individual or corporation upon such terms and conditions as the Contracting Officer shall specify.

In connection with the above clause, see § 83.707 (e)

§ 81.364 *Marking of shipping containers.* Every supply contract will contain a clause substantially as follows (see § 81.1101):

* * * * *

TERMINATION OF FIXED PRICE (LUMP SUM) CONTRACTS—TERMINATION UPON DEFAULT OF CONTRACTOR

Section 81.379 is amended as follows:

§ 81.379 *Steps to be taken in event of default.* (a) The rigid enforcement of contract provisions imposing liquidated damages on contractors for failure to perform within specified periods, or authorizing termination of contracts for default, has been found in many instances to impede the prosecution of the war. The exercise by the several chiefs of supply services of discretion to take such action as may seem to them fair and equitable under all the circumstances will expedite the procurement of necessary war materiel and facilitate the prosecution of the war. For the foregoing reasons, authority is delegated to and confirmed in the chief of each supply service to authorize contracting officers under his command, subject to such limitations as the chief of the supply service may establish, to take any of the following courses in the event of default of the Contractor:

(1) Permit the contractor to proceed and to charge the contractor with the actual damages resulting from the default. If the contract provides for liquidated damages, such damages and not actual damages must be charged.

(2) Enter into a supplemental agreement with the Contractor's surety providing for the completion of performance of the contract and for payment therefor. Such supplemental agreement should clearly state that all rights against the Contractor are reserved so far as the surety does not undertake to cure the effect of the defaults by the Contractor.

(3) Terminate the contract:

(i) Under any provision of the contract permitting termination in the event of default, in which case the provisions of § 81.380 shall be applicable. In exercising the authority to terminate for default due regard should be given to the preservation of rights against any surety on any performance bond.

(ii) Under any contract article providing for termination for the convenience of the Government, when the defaults of the Contractor have not been gross or wilful, and have not caused substantial injury to the Government, if the Contracting Officer shall find that the use of that termination article will facilitate the prosecution of the war and be equitable under all the circumstances.

(4) Extend by supplemental agreement the time fixed in the contract for performance in the manner provided in § 81.308e, and within the time prescribed by § 81.308f, if the default consists of

failure to perform within the time specified by the contract. In general, it is not the policy of the Government to terminate contracts for default under the stringent provisions of a delays-damages article, in a manner to bring about a forfeiture or a severe loss on the part of the Contractor, merely because, at a time when the Government desires to terminate its contract for reasons not based upon the defaults of the Contractor, the Contractor happens to be in technical default under the contract. Attention is directed as to the provisions of § 81.308g.

Section 81.380 is amended as follows:

§ 81.380 *Steps to be taken in event of termination because of default.* (a) If termination is effected pursuant to a contract provision substantially similar to that set forth in § 81.352 or Article 9 of the contract form contained in § 81.1302, the chief of a supply service may, but it is not required to, pursue the remedies provided for in such contract provision or available by law. In lieu of making use of such remedies he may within the time prescribed by § 81.308f, if he finds that to do so will facilitate the prosecution of the war, make a supplemental agreement with the Contractor and relieve the Contractor of liability which would result from the enforcement of such remedies. Such an agreement may be entered into only with the prior approval of the Director, Purchases Division, Headquarters, Army Service Forces (obtained in the manner provided in § 81.308a) except where the chief of a supply service shall find any one of the following facts:

(1) That the Government no longer has need for the supplies, services, or construction called for by the contract;

(2) That the supplies or services, undelivered because of the contractor's default, can be obtained from some source other than the Contractor on a basis as favorable as that set forth in the contract or that the construction provided for in the contract can be accomplished on terms substantially as favorable to the Government as though performed under the original contract;

(3) That for reasons of policy the supply service wishes to buy supplies of the type covered by the contract on terms more expensive or less favorable to the Government than those set forth in the terminated contract. (For example, the supply service may desire to buy from particular producers or in particular geographical areas in order to distribute war work more widely despite any extra expense involved. The excess expense in such a case should not equitably be charged to the Contractor);

(4) That any excess cost charged to the Contractor would be nominal;

(5) That the Contractor currently employs less than 100 employees or was recommended as a prime contractor by the Smaller War Plants Division, War Production Board, has other war contracts existing or prospective, and that enforcement of the remedies provided in the contract would materially impair his ability to perform such contracts.

MISCELLANEOUS

Section 81.318a is redesignated § 81.390 as follows:

- § 81.390 *Assignments* — (a) *Basic statutes.* * * * * *
- (b) *Assignment of Claims Act of 1940.* * * * * *
- (c) *Assignments by operation of law.* * * * * *
- (d) *Transfer of entire business.* * * * * *
- (e) *Corporate mergers.* * * * * *
- (f) *Recognition of assignments prohibited by revised statutes.* * * * * *
- (g) *In connection with the assignment of claims.* * * * * *

Section 81.318b is redesignated § 81.391 and amended as follows:

§ 81.391 *Charges for telegraph, cable, and radio messages in cost-plus-a-fixed-fee contracts.* Pursuant to the provisions of Public Law, 78th Congress, cost-plus-a-fixed-fee contractors and subcontractors are no longer entitled to send telegraph, cable or radio messages at government rates.

Section 81.392 is added as follows:

§ 81.392 *Handling defaults and threatened defaults by suppliers and subcontractors under cost - plus - a - fixed - fee prime contracts.* (a) The following procedures are established to assure to the Government the maximum amount of protection and salvage in cases where suppliers or subcontractors of cost-plus-a-fixed-fee prime contractors fail or refuse to perform their obligations under purchase orders or subcontracts, or threaten to do so:

(1) In general, it is the responsibility of the prime contractor to administer and police his purchase orders and subcontracts; and nothing herein contained shall be construed to remove, lessen or impair such responsibility. In case of a threatened breach of contract by a supplier or subcontractor, it is the duty of the prime contractor to use all lawful means employed by businessmen in the trade to obtain performance. This will normally include the sending of a reminder to the supplier or subcontractor that compliance with contract terms is expected and that the supplier or subcontractor will be held to strict accountability for breach; personal interviews where feasible; and similar steps. It is also the duty of the prime contractor to take all steps reasonably necessary to assure that he will not lose contract rights through waiver or estoppel.

(2) Where default is threatened by a supplier or subcontractor because of bona fide misunderstandings or differences between him and the prime contractor which appear to be capable of fair settlement, the prime contractor will attempt, through negotiation, to obtain such settlement. But no settlement involving any change in the terms of a purchase order or subcontract previously approved by the Contracting Officer shall be made without the written approval of the Contracting Officer.

(3) The prime contractor will notify the Contracting Officer promptly of any situation which may require the issuance

of a purchase order or subcontract to another supplier or subcontractor for supplies or services covered by a purchase order or subcontract as to which default is in prospect or has occurred. Such additional purchase order or subcontract may be issued when the successful and speedy completion of the prime contractor's work is imperilled by default of a supplier or subcontractor. The prime contractor will maintain full and accurate records of cost under such additional purchase order or subcontract for the purpose, among others, of establishing a claim for damages against the defaulting supplier or subcontractor. He will also prepare and keep careful notes of all other information pertinent to the case which may be of assistance in the event of a lawsuit.

(4) Where a supplier or subcontractor has defaulted, and a claim arises in favor of the prime contractor, the latter will attempt to negotiate and settle the claim on reasonable terms whenever it appears that a fair settlement may be preferable to litigation. The prime contractor will keep the Contracting Officer informed of the progress of such settlement negotiations. The Contracting Officer shall have authority to approve a settlement and no settlement agreement will be made without his written approval.

(5) When, in the opinion of the prime contractor, further efforts at settlement will be ineffectual, he will so notify the Contracting Officer. If the Contracting Officer concurs in this opinion, he will direct the prime contractor to assemble all the papers pertinent to the claim, and to make or obtain any affidavits or other records of the transaction, and to prepare any necessary report on the claim. The Contracting Officer will forward this record, together with his own report and recommendation, to the Litigation Division, Office of The Judge Advocate General, through the chief of the supply service concerned.

(6) The Judge Advocate General may from time to time in the further handling of the claim request cooperation and assistance from the prime contractor, the Contracting Officer, and the chief of the supply service concerned, and will in some cases require the Contracting Officer to obtain assignment, from the prime contractor to the United States, of the defaulted purchase order or subcontract. No such assignment will be obtained without the approval of The Judge Advocate General.

(7) If the matter is to be forwarded to the General Accounting Office by The Judge Advocate General it will be forwarded through the Fiscal Division, Headquarters, Army Service Forces.

INTERDEPARTMENTAL PURCHASES

In § 81.608 paragraph (b) is separated into paragraphs (b) and (c), both paragraphs being amended, and paragraph (c) is redesignated paragraph (d) as follows:

§ 81.608 Purchases from Federal Prison Industries, Inc., Department of Justice. * * *

(b) *Requirement.* It is required that all items manufactured by and all services rendered by, Federal Prison Industries, Inc. be purchased from that agency except where a general or special clearance for the purchase of the items from commercial sources has been granted.

(c) *General clearances.* (1) The following general clearance which covers purchases up to June 30, 1943, indicates not only the items as to which such clearance has been granted but also those items which are available and which accordingly must be purchased from Federal Prison Industries, Inc.:

DECEMBER 4, 1942.

Reference: Our letter 12/4/42

The UNDER SECRETARY OF WAR,

Washington, D. C.

DEAR SIR: The following articles and services are available and can be furnished by Federal Prison Industries, Inc., from industries established under the Act of Congress approved May 27, 1930 (46 Stat., 391):

Brushes: Paint and varnish; floor sweeps; hand scrubs, all sizes.

Canvas goods: Shell covers, tarpaulins, water tanks, barracks bags, litters, bags, shower curtains, bandoleers.

Castings: Manhole frames and covers, grates, grate bars, gutter drains, for delivery in the following states only: Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania, New Jersey, Maryland, West Virginia, Virginia, Kentucky, and the District of Columbia.

Fibre furniture.

Laundry services required by posts and stations within 25 miles of the Federal Correctional Institution, Tallahassee, Fla.

Milk: 1,000 pounds per day for delivery to Fort Bliss, Texas, only.

Sheet metal products: Storage shelving, transfer cases, food trays, tool boxes, tool cabinets, tool racks, fan assemblies, ammunition boxes, powder boxes, and stops for bomb storage, land mine casings or shells, practice bombs.

Other metal products: Metal beds and bunks, all types; bomb dunnage racks.

Wood furniture: Douglas, 4C, 3C, wide arm, and side chairs; desk trays for delivery west of the Rocky Mountains.

Work gloves and mittens as listed in Schedule of Products.

Clearance C-20380

a. Clearance is granted to purchase from other sources articles manufactured or services rendered by Federal Prison Industries, Inc., not listed above.

b. Clearance is granted to purchase from other sources articles manufactured or services rendered by Federal Prison Industries, Inc., including the items listed above, in the following cases:

(a) By contractors or contracting officers under cost-plus-a-fixed-fee construction or supply contracts;

(b) By contracting officers under fixed-price (lump sum) construction or supply contracts, wherein the Government is required to furnish certain Government materials;

(c) When immediate delivery or performance is required by the public exigency.

(d) When suitable second hand or used articles can be procured.

(e) When required in small quantities and for delivery within ten days.¹

c. This clearance is to cover purchases made by the War Department only, and is

effective for the period January 1, to June 30, 1943, inclusive.

d. Copy of this clearance should be attached to your contract or voucher when transmitted to the General Accounting Office, or reference made thereon to this clearance number.

Very truly yours,

FEDERAL PRISON

INDUSTRIES, INC.,

By (Signed) A. H. CONNER,
Associate Commissioner.

(2) By letter dated January 14, 1943, Federal Prison Industries, Inc., granted clearance for the purchase from commercial sources of 3C chairs until further notice.

(3) By letter dated March 6, 1943, Federal Prison Industries, Inc., granted clearance until June 30, 1943, for the purchase of paint, varnish, floor sweeps and hand scrubs, all sizes, with the following exceptions:

Stock No. 38-B-5145-E: Flat Varnish, Medium Grade, No. 4.

Stock No. 38-B-5150-E: Flat Varnish, Medium Grade, No. 5.

Stock No. 38-B-5190-E: Flat Varnish, High Grade, No. 1.

Stock No. 38-B-5195-E: Flat Varnish, High Grade, No. 2.

Stock No. 38-B-5205-E: Flat Varnish, High Grade, No. 4.

(d) *Procedure.* * * *

FEDERAL, STATE AND LOCAL TAXES

STATE AND LOCAL TAXES

In § 81.810 the item pertaining to Colorado is amended as follows:

§ 81.810 *Applicable tax directives.* * * *

Colorado. March 12, 1943

LABOR

EIGHT-HOUR LAW OF 1912

Sections 81.904 to 81.914, inclusive, are rescinded and the following §§ 81.904 to 81.912, inclusive, are substituted therefor:

§ 81.904 *Basic law.* The Act requires that, in every contract to which it is applicable, a provision must be inserted that no laborer or mechanic doing any part of the work contemplated by the contract in the employ of a contractor or any subcontractor, shall be required or permitted to work more than 8 hours in any one calendar day upon such work unless such mechanic or laborer is compensated for all hours worked in excess of 8 hours in any one calendar day at not less than 1½ times the basic rate of pay. Act of June 19, 1912 (37 Stat. 137), as amended by section 5 (b) Act of June 28, 1940 (54 Stat. 679) and section 303 Act of September 9, 1940 (54 Stat. 884), 40 U. S. C. 324, 325, 325-A; M. L. 1939 and Supp. I, secs. 743, 745.

(a) *Form of provision.* The form of the provision to be used in contracts to which the Act applies is set out in § 81.346.

§ 81.905 *Applicability of eight-hour law.* The basic law applies to all War Department contracts which may require or involve the employment of la-

¹ Subparagraph (e) was added by a letter from Federal Prison Industries, Inc., dated March 11, 1943.

bors or mechanics either by the prime contractor or any subcontractor, with the following exceptions:

(a) *Exceptions; supply contracts.* The law does not apply to supply contracts, such contracts ordinarily being subject to the Walsh-Healey Act where the amount involved is in excess of \$10,000.00 (§§ 81.916 to 81.961a).

(b) *Exceptions; miscellaneous contracts.* Where the same class of work is not, as a general rule, being performed by the Government, contracts for any of the following classes of work are not covered by the Act.

(1) Contracts for transportation by land or water.

(2) Contracts for the transmission of intelligence.

(3) Contracts for the construction or repair of levees or revetments necessary for protection against floods or overflows on the navigable waters of the United States.

(4) Contracts for supplies or for such materials or articles as may usually be bought in the open market, whether such supplies, materials or articles are made to conform to particular specifications or not (except armor and armor plate).

COPELAND ("ANTI-KICKBACK") ACT

§ 81.906 *Basic law.* The Act provides that whoever shall induce any person employed in work subject to the Act to give up any part of the compensation to which he is entitled under his contract of employment by force, intimidation, threat of procuring dismissal from such employment or any other manner whatsoever, shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both. Act of June 13, 1934, (48 Stat. 948) 40 U.S.C.A. secs. 276 (b) and (c) as amended by Reorganization Plan No. IV, effective June 30, 1940, (54 Stat. 1236) in accordance with sec. 4 of H. J. Res. 551 (Pub. Res. 75) approved June 4, 1940, sec. 4, (54 Stat. 231)—5 U.S.C. 133u.

(a) *Form of provision.* The form of the provision required by regulation in contracts to which the Act applies is set out in § 81.344. (Title 29-A, Department of Labor Regulations 2.6.)

§ 81.907 *Applicability of anti-rebate law—(a) Character of contracts.* Generally the Act applies to contracts and subcontracts for the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States.

(b) *Cost plus contracts.* The Act applies to contracts for such work entered into upon a cost-plus-a-fixed-fee basis or otherwise, with or without advertising for proposals, as well as to contracts entered into upon a lump sum basis.

(c) *Exceptions.* The Act does not apply to supply contracts, such contracts ordinarily being subject to the Walsh-Healey Act where the amount is in excess of \$10,000 (see §§ 81.916-81.961a); nor does it apply ordinarily to installation or maintenance work done for the account

of the Government in connection with and as an incident to supply contracts.

(d) *Determination of applicability.* Since the primary factor for determining whether or not the Act applies is the nature of the work contemplated in the contract and since this same factor is involved in determining whether or not the Davis-Bacon Act applies, reference is here made to § 81.911 which is equally applicable to this section.

§ 81.908 *Procedure.* Pursuant to the provisions of the Act, the Secretary of Labor has prescribed certain regulations made effective April 30, 1942 which govern the procedure to be followed in connection with contracts that are subject to the Act, and the Davis-Bacon Act (§ 81.910 et seq.); also with regard to certain types of authorized deductions and the method of securing approval thereof. The substance of the pertinent regulations follows:

(a) *Weekly affidavit with respect to payment of wages.* Each contractor or subcontractor engaged in work subject to the Act is required to furnish each week a sworn affidavit with respect to the wages paid each of its employees (which shall not be deemed to apply to persons in classifications higher than that of laborer and mechanic and those who are the immediate supervisors of such employees) engaged on the work covered by the Act during the preceding weekly payroll period. The affidavit shall be executed and sworn to by the contractor or subcontractor who supervises the payment of wages and shall be in the following form:

STATE OF _____

County of _____, ss:

I, _____ (Name of party signing affidavit), _____ (title) being duly sworn, do depose and say: That I pay or supervise the payment of the persons employed by _____ (contractor or subcontractor) on the _____ (building or work); that the attached pay-roll sets out accurately and completely the name, occupation, and hourly wage rate of each person so employed for the weekly payroll period from the _____ day of _____, 194____, to the _____ day of _____, 194____, the total number of hours worked by him during such period, the full weekly wages earned by him and any deductions made from such weekly wages, and the actual weekly wages paid to him; that no rebates have been or will be made either directly or indirectly to or on behalf of said _____ (contractor or subcontractor) from the full weekly wages earned as set out on the attached pay-roll; and that no deductions, other than the permissible deductions (as defined in the Regulations under the "Kickback" Act (48 Stat. 948)) described in the following paragraph of this affidavit, have been made or will be made, directly or indirectly, from the full weekly wages earned as set out on the attached pay-roll.

(Paragraph describing deductions, if any)

(Signature and title)

Sworn to before me this _____ day of _____, 194____, (Title 29-A Dept. of Labor Regulations 2.3 (b)).

(b) *Exemptions with respect to weekly affidavits.* Upon a written finding by the Secretary of War, the Secretary of Labor may provide reasonable limita-

tions, variations, tolerances and exemptions from the requirements set forth in paragraph (a) above, subject to such conditions as the Secretary of Labor may specify. Request for such finding shall be submitted through the chief of the supply service to the Industrial Personnel Division, Headquarters, Army Service Forces, for submission through channels to the Secretary of Labor. (Title 29-A, Dept. of Labor Regulations, 2.3 (c)).

(c) *Submission of weekly affidavits and subcontractors summaries.* Each weekly affidavit shall be delivered by the contractor or subcontractor within seven days after the regular payment date of the payroll period to the contracting officer or such other officer as may be designated for such purpose by the chief of the supply service. After such examination and check as may be made, such affidavit or a copy thereof, together with a report of any violation shall be transmitted by the contracting officer or other designated officer directly to the Bureau of Labor Statistics, U. S. Department of Labor, Washington, D. C. (Title 29-A Dept. of Labor Regulations 2.4 (a)).

(d) *Submission of subcontractor summaries.* Each contractor or subcontractor shall within seven days after the making of any subcontract with another person concerning work subject to the Act deliver to the contracting officer or such other officer as may be designated for such purpose by the chief of the supply service, an affidavit setting forth the name and address of his subcontractor and a summary description of the precise work subcontracted. After such examination and check as may be made, such affidavit or a copy thereof shall be transmitted by the contracting officer or other designated officer directly to the Bureau of Labor Statistics, U. S. Department of Labor, Washington, D. C. (Title 29-A Dept. of Labor Regulations 2.4 (b)).

(e) *Authorized pay-roll deductions.*

(1) Deductions for the following payments are permissible:

(i) Where required by Federal, State, or local statutes or ordinances to be made by the employer from the wages earned by the employee;

(ii) Bona fide prepayment of wages without discount or interest;

(iii) Deductions required by court process provided that the contractor or subcontractor will not be permitted to make such a deduction in favor of the contractor, subcontractor, or any affiliated person or where collusion or collaboration exists. (Title 29-A Department of Labor Regulations 2.5 (a)).

(2) Any deduction is also permissible which in fact meets the following standards and with respect to which the contractor or subcontractor shall have made written application by registered mail to the Secretary of Labor, a copy of which application shall be sent to the contracting agency by the contractor or subcontractor setting forth all the pertinent facts, indicating that such deductions will meet the following standards:

(i) That such deduction is not prohibited by other law; and

(ii) That such deduction is (a) voluntarily consented to by the employee in

writing and in advance of the period in which the work was done, and that consent to the deduction is not a condition either for the obtaining of or for the continuance of employment; or (b) that such deduction is for the benefit of the employees or their labor organization through which they are represented and is provided for in a bona fide collective bargaining agreement; and

(iii) That from such deduction no payment is made to, nor profit or benefit is obtained directly or indirectly by the contractor or subcontractor or any affiliated person, and that no portion of the funds, whether in the form of a commission or otherwise, will be returned to the contractor or subcontractor or to any affiliated person; and

(iv) That the convenience and interest of the employees are served thereby, and that such or similar deductions have been customary in this or comparable situations. (Title 29-A Dept. of Labor Regulations 2.5 (b)).

(3) After application in good faith, the deduction may be made in accordance with the foregoing standards: *Provided, however,* That if the Secretary of Labor, on his own motion, or on the application of any person or agency affected by the granting of the application, shall conclude at any time, after written notice to the applicant and an opportunity for him to present his views in support of the deduction, that the deduction has not met the foregoing standards, such deductions shall cease to be "permissible" seven days after the applicant and the Federal agency concerned have been notified of the Secretary's decision. (Title 29-A Department of Labor Regulations 2.5 (c)).

(4) Upon application to and prior written permission from the Secretary of Labor, and subject to the standards set forth in paragraph (e) (2) of this section, deductions may be made by a contractor or subcontractor or any affiliated person, for membership fees in group benefit or retirement associations; for board and lodging; or for other purposes where the Secretary of Labor concludes the deduction is required by compelling circumstances: *Provided, however,* The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction. A copy of the Secretary's decision shall be sent to the applicant and the Federal agency concerned. (Title 29-A Department of Labor Regulations 2.5 (d)).

(5) In accordance with and subject to the standards set forth in paragraph (e) (2) of this section, general permission is hereby granted to make payroll deductions for:

(i) The payment of the purchase price of United States Defense Stamps and Bonds and United States Tax Savings Notes;

(ii) The repayment of loans to or the purchase of shares in credit unions organized in accordance with District of Columbia, Federal, or State credit union statutes;

(iii) Contributions to a Federal governmental or quasi-governmental agency.

(Title 29-A Department of Labor Regulations 2.5 (e)).

(f) *Restricted payments prohibited.* In any case in which the employee does not have full and actual freedom of disposition of his wage payment, whether made in cash or by check, any restricted payment made to the employee is considered a deduction under the regulations in this part. (Title 29-A Department of Labor Regulations 2.5 (h)).

(g) *Lack of knowledge no defense.* Nothing herein shall be construed to permit any deduction which the contractor or subcontractor knew, or in the exercise of good faith should have known, did not meet the foregoing standards. In order to insure compliance with this section, the Secretary of Labor may notify the contractor or subcontractor that the deduction will be permitted only if certain conditions with respect thereto are observed. The contractor or subcontractor or any affiliated person shall also comply with such general rules and regulations concerning the deductions as the Secretary of Labor shall make from time to time, notice of which shall have been given to the contractor or subcontractor or any affiliated person making the deduction and to the Federal agency concerned either directly or through publication in the *FEDERAL REGISTER*. (Title 29-A Dept. of Labor Regulations 2.5 (g)).

(h) *Request for advisory opinions.* The Secretary of Labor will furnish an opinion regarding the coverage of any specific project or with respect to the application of any provisions of the regulations in this part at the request of any Federal or State agency. Request for any such opinion shall be submitted through the chief of the supply service to the Industrial Personnel Division, Headquarters, Army Service Forces, for submission through channels to the Secretary of Labor. (Title 29-A Department of Labor Regulations 2.7).

§ 81.909 Alternative procedures for railway carriers. By letters of October 5, 1942 and January 22, 1943 from the Secretary of Labor to the Secretary of War, a partial exemption regarding the submission of weekly reports above described in paragraph (a) of this section was granted to railway carriers and an alternative method for obtaining permission of the Secretary of Labor to make certain types of deductions was approved. Copies of these letters may be obtained from the office of the Labor Relations Section, Industrial Personnel Division, Headquarters, Army Service Forces.

DAVIS-BACON ACT

§ 81.910 Basic law. The Act as amended requires as to every contract to which it applies:

That a scale of minimum wages for every class of mechanics or laborers employed shall be set out in the specifications (in cases where specifications are advertised for bids).

That a minimum wage scale must be included in the contract together with a stipulation that the same will be observed whether contracts are let on bids or not.

The inclusion of certain additional provisions referred to hereinafter for the administration and enforcement of the required stipulations.

(Act of March 3, 1931 (46 Stat. 1494), as amended by Act of August 30, 1935 (49 Stat. 1011), Act of June 15, 1940, (54 Stat. 399), and Act of March 23, 1941, (55 Stat. 53, 40 U.S.C. 276a, a-1 to a-7), M.L. 1939 and Sup. I, sec. 746)

(a) *Form of provisions required.* The form of provisions required by regulation in contracts to which the Act applies is set out in § 81.343. (Title 29-A, Department of Labor Regulations 2.6).

§ 81.911 Applicability of Davis-Bacon law: Character of contracts covered. The Act as amended applies to all contracts in excess of \$2,000 to be performed in any of the States of the United States, the Territory of Alaska, the Territory of Hawaii or the District of Columbia, for construction, alteration or repair including painting or decorating of public buildings or public works where the same require or involve the employment of mechanics or laborers.

(a) *Definition of "building" and "work" by regulation.* The Secretary of Labor has, by regulation, defined the words "building" and "work" as including, generally, construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work.

(b) *Definition of "construction", or "repair".* The Secretary of Labor has defined the above terms as used in the Act and in the Copeland Act covered in §§ 81.906-81.909 above as, in substance including all types of work done under a construction contract such as altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work by persons employed at the site by the contractor or subcontractor. (Title 29-A Department of Labor Regulations 2.2 (b)).

(c) *Cost plus contracts.* The Act applies to contracts entered into upon a cost-plus-a-fixed-fee basis or otherwise with or without advertising for bids, as well as to contracts entered into upon a lump sum basis.

(d) *Exceptions.* The Act does not apply to:

(1) Contracts for the construction, alteration or repair of vessels or other movable personal property where the place of performance of the contract is not known or cannot be reasonably ascertained at the time the contract is negotiated.

(2) Contracts with railroad carriers or subcontractors let to railroad carriers for the construction, alteration, or repair of railroads insofar as such contracts involve wage rates payable to employees of railroad carriers operating under collective bargaining agreements with the railroad carriers, made agreeable to the provisions of the Railway Labor Act

(Letter March 14, 1942 from the Secretary of Labor to the Secretary of War).

(3) Contracts for servicing and maintenance work generally. (Title 29-A, Department of Labor Regulations 2.2 (a)).

(4) Contracts for manufacturing and furnishing materials or supplies (see Title 29-A, Department of Labor Regulations 2.2 (a)) and servicing and maintenance work incident thereto.

(e) *"Servicing and maintenance work" defined.* The terms "servicing and maintenance work" as used in subparagraphs (3) and (4) of paragraph (d) above, include:

(1) Movement of machinery into or out of or from one part to another part of a building or plant completed or substantially completed.

(2) Installation of machinery, machine tools or other equipment in a plant or building completed or substantially completed.

(3) Plant rearrangement and production facilities adjustment or alterations incident to (1) or (2) above.

NOTE: This definition in connection with subparagraphs (3) and (4) of paragraph (d) does not relate to servicing and maintenance prosecuted by a construction contractor as a part of construction work.

(f) *Determination by chief of supply service.* The Act contemplates an administrative determination of the application of the law to particular contracts and the War Department is authorized to make such determination. The chief of the supply service involved will determine within his own office whether the foregoing regulations require the inclusion of Davis-Bacon (and Copeland) Act provisions in any particular contract. In cases of doubt the question, accompanied by full statement of the facts, shall be referred to the Industrial Personnel Division, Headquarters, Army Service Forces, for determination.

§ 81.912 Regulations, forms and procedures—(a) Regulations; applicability. The regulations of the Secretary of Labor described in § 81.908, where pertinent, are applicable to all contracts subject to the Act.

(b) *Regulations; prevailing rates of wages.* Regulation No. 503 issued by the Secretary of Labor September 30, 1935, as amended April 30, 1942, prescribes the procedures to be followed in predetermining prevailing rates of wages. Whenever a request for wage rate predeterminations is made by the contracting officer and referred to the Secretary of Labor in accordance with the procedures hereinafter described, the necessary steps to obtain evidence upon which the Secretary may make the requisite predeterminations are to be taken by the Solicitor of Labor in accordance with the provisions of Regulation No. 503.

(c) *Forms.* Wage rate predeterminations are to be requested on Forms DB-11, accompanied by Forms DB-15, issued by the Department of Labor (see paragraphs (e) and (f) below). Reports of violations are to be made on standard

Form No. 1093 (see paragraph (g) below).

(d) *How obtained.* Copies of pertinent regulations and forms will be obtained by the chief of the supply service directly from the Department of Labor for distribution to those concerned. The chiefs of the supply services are responsible for the supplying of the necessary regulations and forms to their contracting officers.

(e) *Procedures; request for wage rate predeterminations.* Prior to entering into negotiations for awarding a contract to which the basic law is applicable, the contracting officer will request the Secretary of Labor, through the chief of the supply service concerned, to predetermine the wage rates to be contained in the contract. This request will be made on Department of Labor Form DB-11, and the instructions on that form will be followed. Since the Department of Labor has stated that the basic law does not apply to the following positions, no predetermination of wages is necessary in their cases:

Assistant engineer on dredges or floating plant in supervisory positions.
Assistant foreman.
Camp assistant.
Checker.
Chief mate.
Civil engineer.
Clerk.
Cook.
Cook's helper.
Foreman.
Junior deck officer.
Master or captain.
Mate.
Mess boy.
Messenger.
Office manager.
Pilot.
Quartermaster or steersman.
Steward.
Storekeeper.
Superintendent.
Timekeeper.
Waiter.
Watchman.

(f) *Procedures; prevailing rate information.* Each request submitted as indicated in paragraph (d) above will be accompanied by one or more copies of Department of Labor Form DB-15, executed in accordance with the instructions on that form, which require a separate form for each occupation. In filling out this form, the contracting officer will consult the following and consider the information obtained therefrom in forming the opinion which he is required to state on the form:

(1) The Building Trades Council (or some other local federation or council of the various craft unions),

(2) Independent labor organizations not allied with the local Building Trades Council,

(3) Municipal Officials (the commissioner of public works, the city clerk or other officials in charge of municipal construction who have data on the wage rates paid on city projects),

(4) The employers' organizations (such as Master Builders, the Master Painters, or other contractors' associations, the local chamber of commerce, etc.).

(5) Individual contractors and architects in the locality,

(6) The State Labor Department or its equivalent,

(7) The contracting officer and supervising superintendent, and

(8) The local office of the United States Employment Service or affiliated agency.

(g) *Reports of violations.* Where a contracting officer finds that any laborer or mechanic employed by a contractor or subcontractor on work subject to the Act has been or is being paid wages less than the wages required by the contract to be paid, the contracting officer will make a report on standard Form No. 1093 (schedule of deductions from payment to contractors) executed as completely as possible from his records to the disbursing officer. The latter will complete the execution of the form from his records and transmit it to the office indicated on the form. (Circular letter A-34106, February 28, 1936 of the Comptroller General).

WAGE AND SALARY STABILIZATION

Paragraph (b) is added to § 81.980p as follows:

§ 81.980p General Order No. 16. * * *

(b) *General Order No. 30.* In accordance with the provisions of section 4 of Title II of Executive Order 9250, increases in wage or salary rates which do not bring such rates above 40¢ per hour may be made without the approval of the National War Labor Board, provided that such increases shall not furnish a basis either to increase price ceilings of the commodity or service involved or to resist otherwise justified reductions in such price ceilings.

FORTY-EIGHT HOUR WORKWEEK

Paragraph (d) is added to § 81.985 as follows:

§ 81.985 Forty-eight hour workweek. * * *

(d) *Statement re adoption of forty-eight hour week.* Under date of March 11, 1943, the National War Labor Board defined the extent of its jurisdiction in the matter of overtime pay in the light of Executive Order No. 9301, as follows:

In order to answer the many inquiries received as to the effect of Executive Order 9250 on wages and salaries in the light of the Executive Order of February 9, establishing the minimum wartime work-week of 48 hours, the National War Labor Board today issued the following statement:

1. *Effect of the order on employer's obligation to pay over-time.* Any employer who adopts a 48 hour week in compliance with Executive Order 9301 of February 9, 1943 and the regulations of the War Manpower Commission issued thereunder is under the same obligation with respect to over-time pay as if he had adopted a 48 hour week before the order was issued. That is, his obligation to pay or not to pay over-time rates is in no way affected by the order.

This interpretation is based on the following provision of section 5 of the order:

Nothing in this order shall be construed as superseding or in conflict with * * * the provisions of any individual or collective bargaining agreement with respect to rates of pay for hours worked in excess of the agreed or customary work-week, nor shall this Order be construed as suspending or modifying any provision of the Fair Labor Standards Act or any other Federal, State or

local law relating to the payment of wages or overtime.

2. *Necessity to secure War Labor Board approval for the payment of overtime.* Approval of the War Labor Board is not required for payment of overtime rates to wage and salary employees for hours worked in excess of 40 made in accordance with the provisions of the Fair Labor Standards Act or any other similar Federal, State or local law or by the provisions of a collective bargaining agreement or by the employer's past custom and practice.

If none of these applies, then payment for the hours worked in excess of 40 at other than straight time rates would be a wage increase and would therefore require approval by the War Labor Board.

3. *Salaried employees.* Salaried employees within the jurisdiction of the War Labor Board, whose overtime pay is not covered by the Fair Labor Standards Act or any other similar Federal, State or local law, or by a collective bargaining agreement or their employer's past practice, may not, without the prior approval of the War Labor Board, be paid at more than straight time rates proportionate to the additional hours worked.

4. Application for approval of the increases referred to above may, of course, be made, in accordance with the National War Labor Board's regular procedure, at any local office of the Wage and Hour Division of the U. S. Department of Labor.

PLANT FACILITIES EXPANSIONS

PROCEDURE FOR OBTAINING CLEARANCE AND APPROVAL OF FACILITIES EXPANSIONS

Section 81.1011a is added as follows:

§ 81.1011a *Continuing capital expenditures application.* This application may be made by a supply service for approval of Continuing Capital Expenditures required in connection with an existing project theretofore sponsored by or transferred to sponsorship of such supply service. Such application shall state:

(a) The estimated costs of the additional capital facilities required for a specified current or ensuing quarter year (giving breakdown thereof in accordance with § 81.1009 (a) (5)) together with estimated dollar amount required for the next succeeding three quarter-years, the total amount for such four quarter-years not to exceed 5 percent of the total estimated cost of the project as theretofore approved;

(b) The necessity for such Continuing Capital Expenditures; and

(c) The method of financing thereof, the amount of Expediting Production Funds, if any, required therefor, and the manner in which the balance of such expenditures will be financed.

Such application shall be submitted to and approved by Resources and Production Division. Approval of the War Production Board of such application is not required regardless of the amount, but Resources and Production Division shall notify War Production Board of the amount approved.

(1) Approval of such application shall be subject to the following terms and conditions:

(i) Such expenditures shall be limited to items normally classified as capital charges and shall not be used for items which may properly be charged to maintenance, repairs, or operations;

(ii) Such expenditures shall be only for construction, alterations, extensions, machinery, equipment or other facilities required to round-out or improve operating efficiency, balance production, or otherwise develop maximum utilization of the existing project;

(iii) Such expenditures shall not be used for any new structure, the estimated cost of which exceeds \$25,000, nor for camouflage or any administration buildings or cafeterias but may be used for alterations or extensions of existing facilities of this character;

(iv) Prior to the end of each such quarter-year the supply service shall approve a supplemental schedule setting forth the facilities and estimated costs thereof required for the ensuing quarter-year and no expenditure for the second, third, or fourth quarter shall be made except for items included in such supplemental schedule approved by the supply service for such quarter-year.

MISCELLANEOUS PURCHASE INSTRUCTIONS

MARKING OF CONTAINERS

Section 81.1106a is redesignated § 81.1101, paragraph (e) being amended and paragraphs (f) and (g) being added as follows:

§ 81.1101 *Marking of containers.* * * *

(e) *Marking by contractors.* The supply services will provide either in the contract specifications or by instructions to contracting officers for the marking by contractors of containers in conformance with the principles set forth in the preceding paragraphs. (See § 81.364.)

(f) *U. S. Army specification.* The foregoing paragraphs have been published pending the issuance of a revised United States Army Specification 100-2 which will make uniform the requirements for marking shipping containers.

(g) *Marking of containers.* The foregoing paragraphs do not require remarking of any containers already marked and will be applied to containers used in connection with existing contracts only to the extent reasonably practicable.

Section 81.1106 is redesignated § 81.1102, an introductory paragraph is included preceding paragraph (a), and paragraph (i) is amended as follows:

§ 81.1102 *Numbering of compressed gas cylinders.* See in this connection AR 850-60 (September 29, 1942) covering the safe handling, storing, shipping and using of compressed gas cylinders.

* * * * *

(i) Cylinders originally made for other agencies * * *

(5) If such cylinders are required for export and it is not practicable in the time available to stamp the added marks, any or all of the procedure specified in the foregoing subparagraphs may be omitted.

Section 81.1105 is rescinded. The provision formerly contained in this section with respect to maximum price is integrated with the regulations contained in §§ 81.1130 to 81.1135, inclusive.

Section 81.1108 is rescinded and the substance of the regulations contained therein has been included in § 81.221.

PATENTS

Section 81.1112 (i) is amended as follows:

§ 81.1112 *Adjustment of royalties for use of inventions.* * * *

(i) *Further delegations.* The authority referred to in subparagraphs (1) and (2) of paragraph (h) of this section has been further delegated to the following:

(1) All Division Engineers of the Corps of Engineers,

(2) Director of Research and Development Division, Signal Corps,

(3) The Commanding General, Army Air Forces, Materiel Center, Wright Field, Dayton, Ohio, and

(4) Royalty Adjustment Board, Army Air Forces, Materiel Center, Wright Field, Dayton, Ohio.

The Secretary of War or the Under Secretary of War upon request will make further delegations. In the event the chief of any supply service desires that the authority referred to in subparagraphs (1) and (2) of paragraph (h) be delegated to other officers, such chief shall forward to the Director, Purchases Division, Headquarters, Army Service Forces, a memorandum specifying the office to whom such delegation should be made and the extent of such delegation. The title of the position held and not the name of the individual officer should be specified. The powers, duties and authorities referred to in paragraph (h) shall not be redelegated by the chiefs of the supply services under the authority to redelegate conferred in § 81.107 (1).

LITIGATION AND RELATED MATTERS

Section 81.1113 is redesignated § 81.1120 as follows:

§ 81.1120 *Procedure for handling litigation involving cost-plus-a-fixed-fee contractors.* * * *

Section 81.1115 is redesignated § 81.1121 as follows:

§ 81.1121 *Reports of criminal conduct in connection with War Department contracts.* * * *

PRICE REGULATIONS

Section 81.1130 to 81.1135 are added as follows:

§ 81.1130 *General—(a) Scope of §§ 81.1130-81.1135.* Sections 81.1130 to 81.1135, inclusive, deal with problems arising from or associated with the application of the maximum price regulations issued by the Office of Price Administration to purchases made by the War Department. The basic authority for OPA actions is to be found in the Emergency Price Control Act of 1942 (Public, 421, 77th Congress), as amended by Act of October 2, 1942 (Public, 729, 77th Congress), and in Executive Order 9250, promulgated October 3, 1942. The following discussion of maximum price regulations and various orders issued by

OPA is introductory and is not intended to be complete. Complete details and the text of OPA regulations may be procured from the *FEDERAL REGISTER*, or may be had from any OPA office. Should these sources fail, inquiries should be sent through the Chief of the Supply Service concerned to the Price Regulation Branch, Purchases Divisions, Headquarters, Army Service Forces, Washington, D. C.

(b) *Function of Price Regulation Branch.* (1) Because of penalties imposed by the Emergency Price Control Act upon manufacturers who violate price ceilings, manufacturers must proceed with caution in the acceptance of contracts. To accelerate the placing of contracts, it is important that procurement personnel be familiar with the problems involved and able on occasions to be of assistance or guidance to contractors. It is an important function of the Price Regulation Branch to expedite the solution of specific problems.

(2) Whenever contact or negotiation is necessary between one of the services and the office of Price Administration on any price regulation or rationing problem which involves a general policy or might affect more than one of the services, the negotiations will be conducted through the Chief, Price Regulation Branch, Purchases Division.

§ 81.1131 Applicable OPA regulations—(a) Specific commodity price regulations. Beginning in February, 1941, the OPA began promulgating "maximum price schedules". One hundred and five such schedules were issued prior to February 11, 1942, when the Administrator took office under the Emergency Price Control Act of 1942. Up to that time, there was no directly applicable statute authorizing price control. However, the Emergency Price Control Act of 1942 expressly validated previous schedules and gave the Administrator express power to issue "maximum price regulations". Up to the end of December, 1942, some 289 specific commodity price regulations (or schedules) had been issued. Certain "price schedules" have been re-promulgated as "price regulations"; but whether or not re-promulgated, a "price schedule" is equally effective as a "price regulation" in imposing a maximum price. See § 81.1135 for a list of maximum price regulations and schedules of possible interest to procurement officers.

(b) *The General Maximum Price Regulation.* On April 28, 1942, the OPA Administrator issued the General Maximum Price Regulation, commonly known and hereafter referred to as the GMPR, placing a price ceiling on practically all commodities and services sold or rendered by manufacturers, wholesalers and retailers, if not covered by specific price regulations. (See § 81.1132 for Exemptions.) Except for certain procedural requirements, this regulation, however, does not apply to transactions covered by any other price regulation, either past or future. The OPA is continuing to issue new specific price regulations. With respect to sales or deliveries to or contracts with the War Department or the Navy Department, the effective date of

the GMPR is July 1, 1942. In general, ceiling prices on items covered by this regulation are based on the highest prices charged in March, 1942. Reference should be made to the regulation itself for an exact statement of such provisions of the methods for determining maximum prices for articles to which the formula for determining price in accordance with the highest price charged in March 1942 cannot apply. Commodities and services that are included under specific price regulations, past or future, remain or become subject to the specific price ceilings, even though they may be exempt from the GMPR under a supplementary regulation, unless specifically exempted by the terms of the specific price regulation itself. (See § 81.1132 (d)).

(c) *War Department: OPA Agreement, September 1942.* From the foregoing, it will be noted that items now entirely exempt from regulation may by some future date be brought under regulation by a new specific price regulation. However, by recent agreement between the OPA and the War Department, military items exempt in September 1942, will remain exempt, whether exempted from the GMPR by Supplemental Regulation No. 4 (§ 81.1132 (a)) or from a specific regulation by its terms. Under this agreement, the OPA has reserved the right to resume control over exempt items if it develops that the War Department is unable to control prices effectively through its own procurement policies.

(d) *The Service Regulation; MPR 165.* As above noted (paragraph (b) all services (along with commodities) were brought under control of OPA by the GMPR. Effective August 19, 1942, Maximum Price Regulation 165 brought under specific control a long list of services, leaving those not specifically listed still covered by the GMPR, subject to exemptions. (See § 81.1132 (e).)

§ 81.1132 Exemptions—(a) Exemptions under Supplementary Regulation No. 4 of the GMPR. (1) Revised Supplementary Regulation No. 4, effective July 1, 1942, provides that the General Maximum Price Regulation shall not apply to sales or deliveries of the following commodities or in the following transactions:

(i) Sales or deliveries to the United States or any agency thereof, or to the government of any country whose defense the President deems vital to the defense of the United States under the terms of the Act of March 11, 1941, entitled "An Act to promote the defense of the United States," or any agency of such government, of aircraft, ammunition, armored trains, artillery, balloon barrage equipment, bombs, bomb sights, caissons, fire control equipment, gas masks, grenades, gun sights, military bridges, mines, mortars, projectiles, pyrotechnics, small arms, ships and boats and torpedoes; and amphibians, armored vehicles, automobiles, tanks, trailers and trucks for military purposes.

(ii) Component parts and subassemblies of any product set forth under (a) above, regardless of the person to whom

sold or delivered. The term "component parts and subassemblies" includes all metallic and non-metallic component parts, adjuncts and accessories which have been machined or fabricated. The term does not include raw or unfinished materials or any other materials which are in such form as to permit their use in the manufacture of products other than those set forth under (a) above.

(iii) Any manufacturing service performed by a person other than the manufacturer in the production of any product set forth under (a) and (b) above, if all or part of the material on which such service is performed is supplied by the manufacturer.

(iv) Military propellants and explosives.

(v) Developmental contracts or subcontracts, secret contracts, and emergency purchases.

(vi) Sales and deliveries to the United States or any of its agencies of certain canned foods.

(vii) Sales and deliveries to the armed forces of the United States of certain dried fruits and of dehydrated vegetables.

(viii) Sales and deliveries to the armed forces of the United States of beef and veal, or any products made from them, under contracts entered into prior to July 13, 1942.

2. The above is not an exact or complete quotation. In specific cases reference should be made to the text of Revised Supplementary Regulation No. 4, which also contains other exceptions. It is to be noted that the exceptions are from the GMPR; articles exempt from the GMPR may be covered by a specific MPR.

(b) *Commodities excepted from the GMPR by Supplementary Regulation No. 1.* Certain commodities, certain kinds of sales and deliveries (as for example the sale and delivery of used, damaged or waste material by the War Department), and certain services have been excepted from the application of the GMPR by Supplementary Regulation No. 1. Reference is made to said Regulation for a complete list of exceptions, some of which may be of interest to procurement officers.

(c) *Exemption of sales by Army stores.* By Supplementary Order 27 effective November 14, 1942, all sales and deliveries of any commodity by the War Department through the Department's sales stores, including commissaries, Army canteens, and Post exchanges, were exempted from all price regulation. The OPA retained the right, however, to bring such sales under control by specific provisions inserted in a regulation issued at a later date.

(d) *Exemptions contained in specific price regulations.* Certain of the specific maximum price regulations contain exemptions of the commodities covered by them of interest to Procurement Officers. These exemptions may be in whole or in part, and are effected by various methods, among which may be enumerated:

(1) By the incorporation by general reference of all supplementary regulations to the GMPR, including Revised Supplementary Regulation No. 4;

(2) By exempting sales to the United States and all agencies thereof;

(3) By incorporating by reference certain of the clauses of Revised Supplementary Regulation No. 4;

(4) By clauses specifically excluding secret and developmental contracts or emergency purchases or all three from the coverage of the specific price regulation. (See paragraph (f) of this section.)

(e) *Exemptions of services.* By Supplementary Regulation No. 11 effective August 19, 1942, a large number of special services were exempted from the provisions of the GMPR. By an amendment effective December 3, 1942, the provisions of MPR 165 were specifically made non-applicable to the services exempted by Supplementary Regulation No. 11, as well as to those services exempted by Supplementary Regulation No. 4.

(f) *Exemption of developmental and secret contracts and emergency purchases.* (1) By Revised Supplementary Regulation No. 4, developmental and secret contracts and subcontracts entered into, and emergency purchases made by, the United States or any of its agencies are exempt from the GMPR. In addition, certain of the specific Maximum Price Regulations exempt such contracts and purchases, either specifically or by incorporating by general or specific reference the exemptions of such contracts and purchases contained in Supplementary Regulation No. 4. Reference must be made in each case to the applicable MPR to ascertain whether or not these contracts and purchases are excluded therefrom. In the case of both developmental and secret contracts, the exemption applies only during such period as is necessary for development or for the preservation of secrecy. A contract or subcontract is deemed to be "developmental" if the manufacturer or supplier requires a period of time for the accumulation of sufficient production experience to permit him to make a fair estimate of his manufacturing costs, or if the purchaser under such contract or subcontract requires a period of time to select a product, or both. To satisfy the definition of "emergency" for purposes of the exemption.

(i) The subject matter of the purchase must be needed at once, and

(ii) At least a portion of the purchase must be capable of immediate delivery. In any case, the emergency exemption is applicable only to the quantity immediately deliverable. The exemption will not apply to contracts or agreements for future delivery.

2. By the terms of the Service Regulation (MPR 165) sales of services pursuant to developmental and secret contracts and subcontracts entered into, and emergency purchases made by, any war procurement agency were exempted from the application of this Regulation and also the GMPR. In general, the same qualifications apply to developmental contracts and to emergency purchases as described above in this paragraph in connection with Revised Supplementary Regulation No. 4; except that for services the developmental period is limited to ninety days.

§ 81.1133 Procedure for obtaining exemption under developmental and secret contracts and emergency purchases or for relief from a price regulation—(a) Procedure under developmental contracts. To obtain exemption of the sale or delivery of any commodity manufactured or service supplied pursuant to a developmental contract or subcontract it is necessary (1) that the contract or subcontract be certified in writing to the OPA, Washington, D. C. by the United States or its agency as being a developmental contract or subcontract and (2) that the manufacturer of the commodity or supplier of the service file a report with the OPA, Washington, D. C. within ten days after entering into any such contract or subcontract. The form of certification to be used by the purchasing agency is not standardized, but all that need be stated is:

In accordance with the provisions of Maximum Price Regulation No. _____, Section _____, (or General Maximum) the following contract is hereby certified as "developmental". Contract No. _____, Date of Contract _____, Name and address of the supplier _____, Commodity covered _____

This certification should be sent in duplicate to the Office of Price Administration, Washington, D. C., Attention War Goods Price Coordinator.

(b) *Procedure under secret contracts.* To obtain exemption of the sale or delivery of any commodity manufactured or service supplied pursuant to a secret contract or subcontract it is necessary that it be certified as such to the OPA by the purchasing agency. Such certification need only set forth the date of the secret contract and its number or other designation, not including the commodity covered or the name or address of the supplier. This certification should be sent to the Office of Price Administration, Washington, D. C., attention: War Goods Price Coordinator.

(c) *Procedure under emergency purchases.* To obtain exemption of the emergency purchase for any commodity for immediate delivery or of services for immediate performance, it is necessary that the purchasing officer, whenever such a purchase is made above maximum prices, file a report with OPA in Washington within five days (ten days in the case of services) after the purchase is made. This report must certify that it was imperative to secure the commodity or service immediately and that it was impossible to secure or unfair to require immediate delivery or performance at the applicable maximum price. The report should set forth (1) the name and address of the seller (2) the date of purchase (3) the date of delivery or performance (4) the description of the commodity purchased or service performed (5) the quantity purchased or performed (6) the price at which purchased or supplied, and (7) a brief statement of the facts giving rise to the emergency situation. This report should be sent in duplicate to the Office of Price Administration, Washington, D. C. Attention: War Goods Price Coordinator. No report is required in the case of services unless the total price thereof ex-

ceeds \$500.00 and a similar exemption is extended in some specific MPR's to emergency purchases.

(d) *Procedure for obtaining relief.* OPA Procedural Regulation No. 6, effective July 3, 1942, sets forth the procedure to be followed in all cases except when otherwise specifically provided to obtain prompt adjustments of maximum prices for commodities or services under Government contract or sub-contract. The regulation provides that any person who has entered into or proposes to enter into a Government contract, or subcontract under a Government contract, and who believes that an established maximum price impedes or threatens to impede production of a commodity or supply of a service which is essential to the war program, may apply for adjustment of that maximum price. Any Government agency may appear as an interested party under any such application. Upon the filing of an application and pending the issuance of an order by the OPA granting or denying the application, contracts or subcontracts may be entered into, and deliveries made at the price requested in the application, subject to later refunds and price reduction if the application is denied. Applications involving contracts exceeding \$5,000,000 in value must be filed with the OPA in Washington, D. C. Other applications (with a few exceptions) may be filed either with the appropriate regional office of the OPA or with the OPA in Washington, D. C.

§ 81.1134 Compliance—(a) Responsibility of contracting officers. (1) Contracting Officers, in executing contracts, unless otherwise specifically directed, are not required to verify the prices charged by any vendor or contractor against the maximum prices fixed in accordance with the Emergency Price Control Act of 1942, and in the absence of actual knowledge of violation of price limitations, they may assume that prices charged do not exceed maximum prices. Likewise, in connection with cost-plus-a-fixed-fee contracts, contracting officers in approving items for reimbursement are not responsible for determining whether the costs of materials, supplies, tools, equipment or machinery exceed the maximum prices thus fixed. In the interests of economical purchasing, however, contracting officers are expected to exert reasonable effort to be familiar with the OPA regulations that apply to the commodities and services which they buy.

(2) Where a contracting officer is definitely informed that the price or proposed price of a commodity or service is in excess of the OPA maximum, he should proceed as follows:

(i) Try to negotiate a reduction in the price to conform to the OPA standard; (ii) If such a reduction proves impossible, endeavor to have the contractor file an application for an adjustment of the established maximum price with OPA under Procedural Regulation 6 (see § 81.1133 (d));

(iii) If necessary, and if immediate deliveries can be made, make emergency purchases for immediate delivery in excess of the OPA maxima, complying with

the requirements set forth in § 81.1133 (c);

(iv) If recourse to the foregoing methods proves unsuccessful and the contracting officer believes an impairment of production of essential war material is threatened, report should be made at once to the Chief of the Supply Service concerned and the services of the Price Regulation Branch enlisted to remove the impediment.

(v) As a last resort, the statutes provide for the requisition of needed articles already in existence, and for mandatory orders to compel the supply of essential military items. For the conditions and procedures governing the use of these methods, see § 81.246 (a) and §§ 81.1401 to 81.1428.

(b) *Acceptance of contractor's certification.* The action of certifying and disbursing officers in connection with such price limitations is governed by Fiscal Directive SPBFA-11A, June 19, 1942, providing as follows:

1. The certification now required on Standard Form No. 1034-revised, as used in connection with payments made to vendors or contractors for purchases or services rendered other than personal will be continued in use and is a proper and sufficient warranty of compliance by the vendor or contractor with the price ceilings established in accordance with the provisions of the Emergency Price Control Act of 1942, Public Law 421, approved January 30, 1942.

2. In the absence of actual knowledge of violation of price limitations, certifying officers may rely upon the certificate of the vendor or contractor as to the correctness of the prices charged and will not be required to verify such prices against maxima established by the Office of Price Administration. Disbursing Officers may rely upon their records and the certificate of the vendor or contractor and will not be required to verify such maxima prices.

3. Disbursing officers will make payment in accordance with the above outlined procedure.

The form of certification (Standard Form 1034) is as follows:

I certify that the above bill is correct and just; that payment therefor has not been received; that all statutory requirements as to American production and labor standards, and all conditions of purchase applicable to the transactions have been complied with; and that State or local sales taxes are not included in the amounts billed.

The words "the above bill is correct and just" and "all conditions of purchase applicable to the transactions have been complied with" constitute a proper and sufficient warranty by the vendors and contractors that the prices billed are within any applicable price ceilings established by the OPA. Accordingly, no additional certificate or statement by the vendors and contractors with respect to maximum prices should be required. Also, no special certificate accompanying quotations, or warranty in the contract with respect to compliance with price regulations will be required.

(c) *Exemption from liability of contracting and finance officers.* Supplementary Order No. 7, entitled "Removal of Liability of War Procurement Agencies and Governments whose Defense is Vital to the Defense of the United

States," effective July 11, 1942, provides that prohibitions contained in maximum price regulations against buying or receiving a commodity or service at a price higher than the permitted maximum shall not apply to (1) any War Procurement Agency of the United States or any contracting or paying finance officer thereof or (2) the Government of any country whose defense is deemed by the President to be vital to the defense of the United States under the terms of the Act of March 11, 1941. It provides further that any such War Procurement Agencies or contracting or paying finance officers of any such government or agency, shall be relieved of any criminal or civil liability imposed by a maximum price regulation or by the Emergency Price Control Act of 1942. The OPA statement of considerations involved in the issuance of Supplementary Order No. 7 states such purchases are typically not purchases "in the course of trade or business" within the meaning of the Act.

(d) *Non-exemption of contractors holding War Department contracts.* The OPA had advised, however, that this exemption is applicable only to Government contracting officers in connection with Government purchases and does not extend to purchases made by contractors even when operating under cost-plus-a-fixed-fee contracts, and even though purchases made by them are reimbursable by the Government. Cost-plus-a-fixed-fee contractors, as well as all other prime contractors, are buyers "in the course of trade or business" within the meaning of section 4 (a) of the Emergency Price Control Act of 1942, and are, therefore, subject to the prohibitions of that section.

§ 81.1135 *Index of Army purchase items.* For convenience of identification of applicable price regulations an index of articles commonly purchased for the Army, taken substantially from Army Purchase Information Bulletin, is incorporated in this section (paragraph (b)) followed by a further list of the price regulations by numerical sequence (paragraph (c)). These lists are subject to revision and must be used with caution, bearing in mind that OPA is constantly issuing changes and revisions, and from time to time is placing articles now under the GMPR under the control of Specific Price Regulations, or shifting them from the coverage of one MPR to another.

(a) *OPA revisions of price regulations.* Whenever the Office of Price Administration makes an industry-wide revision of ceiling prices on any item purchased by the War Department, or other revision in ceiling prices affecting products purchased by the War Department, the Office of the Chief of the Supply Service involved will notify all contracting officers concerned and the Service's Price Analysis Section. For the information of the Supply Services the Price Regulation Branch will issue bulletins from time to time summarizing all such changes or other actions of OPA affecting Army procurement made or taken during the preceding period. The Chiefs of the Supply Services will designate a

suitable officer or employee who shall be charged with the duty of disseminating all such information.

(b) *General index of articles purchased and applicable OPA regulations.*

Commodity	Regulations
Abrasives	316
Adding machines	188-GMPR
Air compressors	134-136
Aircraft communications equipment	136
Airplanes, airplane parts, Exempt equipment and accessories; military	28-34-37-170-295-GMPR
Alcohol	28-34-37-170-295-GMPR
Aluminum and alloys: bars, plates, rods, shapes, sheets	GMPR
Aluminum paste and powder	GMPR
Athletic equipment (except clothing and shoes)	188-210-GMPR
Automotive equipment & supplies (except military which are exempt):	188-GMPR
automobile parts	136-GMPR
mechanic's hand tools	188-GMPR
tires	63-119-143-GMPR
Badges	157-188-GMPR
Bags:	
paper	182-GMPR
other materials	55-118-151
Bakery equipment:	
machinery	136
other equipment and supplies	188-GMPR
Barrels	43-GMPR
Basins:	
canvas folding	GMPR
wash	GMPR
Bathrobes	142-210-GMPR
Bedding rolls	188-GMPR
Beds, double deck	188-GMPR
Bedsteads	188-GMPR
Belts: web, leather	157-GMPR
Biologicals	282-GMPR
Black boards	188-GMPR
Blankets	118-157-GMPR
Boat equipment: boat hooks, bilge pumps, anchors, etc.	188-GMPR
Books	Exempt
Boots:	
canvas or leather	157-210-GMPR
rubber	132-157-229-GMPR
Borax	GMPR
Brass, wire, plates, cartridge, etc.	GMPR
Brassards	157-GMPR
Bridges, pontoon	Exempt
Bronze: wire, bars, plates, etc.	GMPR
Brooms	188-GMPR
Brushes, cleaning equipment	188-GMPR
Buckets, G. I.	43-GMPR
Building materials: heating, hardware, concrete, clay, sand, insulating and similar products	188-GMPR
Burlap	18-GMPR
Butter	268-289
Buttons	149-188-GMPR
Cable and wire, electrical	82-136
Calcium hypochlorite	GMPR
Camouflage equipment:	
paint	188-GMPR
rope or twine netting	GMPR
wire netting	6-49
Candles	GMPR
Candy, chewing gum	249-250-255-256-262-GMPR
Cans, corrugated	GMPR
Canvas	118-127-157

Commodity	Regulations	Commodity	Regulations	Commodity	Regulations
Canvas cot covers	118-157	Containers, corrugated metal	GMPR	Fountains, drinking	188-GMPR
Canvas folding basins	GMPR	Copper: bars, wire plates	GMPR	Fruits, fresh and frozen: fresh (except bananas and citrus fruits).	Exempt
Caps	142-157-210- GMPR	Cordage	188-GMPR	frozen	207-255-256
Cars, railroad	136	Cots, canvas	188-GMPR	bananas, fresh	268-285
Carts, hand	136	Cotton waste (wiping rags)	GMPR	citrus fruits, fresh	268-280-292
Caustic soda	GMPR	Covers, canteen: cloth	GMPR	Fruit juice extractors	188-GMPR
Ceramics	188-GMPR	Cranes	134-136	Furniture	188-GMPR
Chain:		Crates, wooden	195	Furnaces, heat treating	136
except power transmission	188-GMPR	Cutlery	188-GMPR	Gauges	136-188-GMPR
power transmission	136	Dental equipment, instruments & supplies:		Gas Masks, military	Exempt
Chairs	188-GMPR	rubber	300-301-GMPR	Gas, oxygen and acetylene	GMPR
Chamolts	GMPR	all except rubber	188-GMPR	Gasoline Station Equipment: pumps, storage tanks, etc.	136
Charcoal	GMPR	Deodorants	282-GMPR	Generators, electrical	136
Cheese	268-280-289	Desks	188-GMPR	Glass, window	188-GMPR
Chemical plant equipment.	136	Dies, molds and patterns	136	Glass bottles and jars	188-GMPR
Chemicals:		Dishes	188-GMPR	Glass components of gas masks	Exempt
formaldehyde—21; acetic acid—31; natural acetone—36; glycerine—38; paraffin wax—42; hide glue stock—68; carbon tetrachloride—79; dry or powdered lithopone—80; pure zinc sulphide—80; titanium pigments—98; acetyl salicylic acid (aspirin)—99; citric acid—101; salicylic acid—103; vitamin preparations—104; 203 GMPR; anti-freeze solutions—170; nitrocellulose film scrap—171; pine oil—179; color pigments—180; cotton linters (chemical grade)—191; cresylic acid (imported)—192; shellac—245; industrial waxes—264; totaquina and totaquina products—278; private formula pharmaceutical, proprietary drug, and cosmetic products—282; natural resins—297; all other chemicals.		Disinfectants	142-GMPR	Glassware	188-GMPR
Chemicals industrial (see Chemicals).		Dogs	Exempt	Gloves	157-210-GMPR
Chests, supply and pack	195	Dog food	GMPR	Glue	76-GMPR
artillery (wooden).		Dog shipping crates	195	Goggles	188-GMPR
Chinaware	116-GMPR	Dog training equipment	GMPR	Grinders (machine tools)	1-67
Cigars and cigarettes	62-280-GMPR	Drafting equipment	136-188-GMPR	Groceries, for human consumption.	(48 maximum price regulations)
Cipher and coding devices, Exempt		Dredges	134-136	Hardware, builders'	40-188-261-317-GMPR
Cleanser, metal and wood	GMPR	Drugs (see Chemicals).		Harness and saddlery	133-GMPR
Clipping machines, horse, including blades and parts.	188-GMPR	Dubbing	GMPR	Harness, dog	GMPR
Cloth, suiting	23-118-127-157-163	Eggs	280-333	Hats	142-157-210-GMPR
Cloth, specially prepared	GMPR	Electrical supplies (light and power):		Haversacks	157-GMPR
Clothing: uniforms for men and women, flying and mountain warfare, special, bakers', cooks', nurses'.	157-177-287-330-GMPR	cable and wire	82-136	Heating equipment:	
cold climate	157-210-GMPR	generators, dynamos, etc.	136	commercial and house hold.	188-GMPR
Clothing, repair equipment (industrial sewing machines).	136	wiring devices	136	industrial	136
Clubs, police	GMPR	Electro-plating equipment	136	Horses	Exempt
Coal	112-120-121-122-189	Engines: gasoline and electric.	136	Hospital equipment	188-GMPR
Coat hangers	187-188-GMPR	Engines, marine	136	Ice storage	GMPR
Code and cipher devices, Exempt		Experimental equipment (aircraft communication).	136	Identification Buttons, photographic.	188-GMPR
Comforters, wool filled	188-GMPR	Explosive processing equipment.	136	Implements, agricultural (hand tools).	188-GMPR
Communications equipment.	136	Explosives, military	Exempt	Incinerators	188-GMPR
Construction machinery	134-136	Fences	6-49-210-324-GMPR	Insecticides	142-144-GMPR
Construction materials (see Building materials).		Fertilizers	135-GMPR	Insignia	157-188-GMPR
Forage:		Field house equipment	188-GMPR	Insulation	188-GMPR
alfalfa hay (California, Oregon, Washington).		Filing equipment	188-GMPR	Instruments, special and technical.	136-188-GMPR
except California, Oregon, Washington.		Fire fighting equipment, portable.	188-GMPR	Iron and steel: wire, bars, plates, etc.	6-49
animal product feeding stuffs.		Fire hydrants	188-GMPR	Iron and steel castings	41-214-235-241-244
millfeeds (except wheat).		Fish: canned	184-209-237-238-247-277-299-311-328-GMPR	Kerosene	88-137
		fresh	Exempt	Kitchen equipment: furniture and fixtures.	188-GMPR
		frozen	303-GMPR	Kitchenware	188-GMPR
		Flags, colors, and standards.	157-GMPR	Laboratory supplies and equipment.	136-188-GMPR
		Floats, pneumatic	157-GMPR	Lamps, incandescent	188-GMPR
		Floor coverings	57-65-288-GMPR	Lanterns and accessories	188-GMPR
		Flour	237-238-280-296-305-GMPR	Lasts, shoe	196-GMPR
		Fly paper	129	Lathes: metalworking, woodworking.	1-67-136
		Fly swatters	188-GMPR	Laundry equipment and supplies.	136-188-GMPR
		Flying equipment and supplies: apparel and related items.	157	Lawn mowers	188-GMPR
		Foods, for human consumption.	(48 maximum price regulations)	Lead	69-70-199-GMPR
		Foot measuring devices	188-GMPR	Leggins	157-GMPR
		Forage:		Lighting equipment: commercial and industrial.	134-136
		alfalfa hay (California, Oregon, Washington).	322	household	188-GMPR
		except California, Oregon, Washington.	Exempt	Lime, chlorinated	188-GMPR
		animal product feeding stuffs.	74	Lithograph equipment	188-GMPR
		millfeeds (except wheat).	Exempt	Lockers, trunk	188-GMPR
				Locks and locking devices.	40-188-261-317-GMPR
				Lumber	(31 maximum price regulations)
				Lye	GMPR
				Machinery, horse clipping.	188-GMPR
				Machines, laundry	136-188-GMPR

Commodity	Regulations	Commodity	Regulations	Commodity	Regulations
Machines and machine tools.	1-67-133-134-136-246-GMPR	Sleeping bags	188-GMPR	Women's wear	142-157-178-210-220-287-330
Machines, road	134-136	Snow plows	136	Wooden crates	195
Machines, shoe repair	136	Snow shoes	188-GMPR	X-Ray machines and supplies.	188-GMPR
Machines, woodworking	136	Soap	GMPR	Zippers	188-GMPR
Marking devices (metal)	136	Socks	GMPR		
Matches, safety	129-GMPR	Sodium hypochlorite	GMPR		
Mattresses	188-GMPR	Sponges	267-GMPR		
Meats and meat products	148-156-169-239-286-GMPR	Stationery supplies	188-210-225-GMPR		
Medals	188-GMPR	Stage equipment	GMPR		
Medical equipment	188-GMPR	Standards for flags	GMPR		
Metal cleaners and polishers.	GMPR	Steel bridges	Exempt		
Metal components of gas masks.	Exempt	Steel buildings	Exempt		
Meteorological equipment.	136-188-GMPR	Steel: wire, rods, bars, plates, etc.	6-49		
Mirrors	188-GMPR	Steel wool	GMPR		
Mortuary supplies	188-GMPR	Stencil paper	188-GMPR		
Mosquito bars	GMPR	Stools	188-GMPR		
Moulds	136	Stoves	188-GMPR		
Mules	Exempt	Subsistence, for human consumption.	(48 maximum price regulations)		
Musical instruments	188-GMPR	Surgical supplies	188-GMPR		
Naphthalene flakes	GMPR	Surveying equipment	136		
Navigational equipment	136	Suspenders	220-GMPR		
Neckties	142-157-GMPR	Sweaters	210-GMPR		
Numbering machines	188-GMPR	Tables, folding camp	188-GMPR		
Optical instruments, and accessories.	188-GMPR	Tables, mess	188-GMPR		
Organs, Chapel	188-GMPR	Tableware	188-GMPR		
Overcoats	157-177	Tanks, water, gasoline	136-188-GMPR		
Packs, pack board	157-GMPR	Telephone and telegraph equipment.	136		
Paints, varnish, oils and related products.	188-GMPR	Tentage	118-127-157		
Paint spraying equipment	188-GMPR	Textiles, apparel and related items when made in accordance with military specifications.	157		
Pajamas	210-GMPR	Thermometers	136-188-GMPR		
Paper	32-129-130-182-187-210-225-226-307-GMPR	Thread	7-23-33-GMPR		
Parachutes	157	Tobacco and tobacco products.	62-228-260-283-308-GMPR		
Photoengraving equipment.	188-GMPR	Toilet paper	266		
Photographic equipment.	188-GMPR	Toilet articles	188-GMPR		
Physiotherapy equipment.	188-GMPR	Tools, hand	188-GMPR		
Pigeon equipment	GMPR	Tool boxes, wood	188-GMPR		
Pillow cases	89	Tools, machine	1-67		
Plastic gas mask component.	Exempt	Towels, cloth	188-GMPR		
Plumbing fixtures	188-GMPR	Tractors, construction	134-136		
Polish, metal	GMPR	Trailers	GMPR		
Poultry	268-269	Transformers	136		
Pumps	134-136-188-GMPR	Tubs, foot	188-GMPR		
Radio communication equipment.	136	Typewriters	162-188-GMPR		
Railroad and track supplies.	136	Typewriter ribbons	188-GMPR		
Raincoats	157-220-GMPR	Underwear	157-210-221-273-GMPR		
Ranges	64-188-GMPR	Uniforms (see clothing).			
Recreation equipment	188-GMPR	Vegetables:			
Refrigerators:		fresh (except potatoes, carrots, tomatoes, snap beans, peas, cabbage, spinach and lettuce, canned)	Exempt		
commercial and industrial.	136	frozen	152-237-238-GMPR		
household	102-110-139-188-GMPR	carrots, tomatoes, snap beans, peas and cabbage: fresh.	207-255-256		
Ribbons	GMPR	potatoes	255-256-262-268-271		
Rope	188-GMPR	spinach and lettuce, fresh.	TMPR-29 ¹		
Rubber clothing	157-220-300-301-GMPR	Vehicles:			
Rubber stamps	188-GMPR	animal-drawn	133-246-GMPR		
Ruck sacks	157-GMPR	motor	85-136-GMPR		
Rust preventatives	GMPR	Veterinary equipment	188-GMPR		
Saddles	133-GMPR	Waste receptacles	188-GMPR		
Safes	188-GMPR	Water, distilled	GMPR		
Scales, weighing	136-188-GMPR	Wax, floor	GMPR		
Scientific equipment	136-188-GMPR	Welding equipment and supplies.	134-136-188-GMPR		
Searchlights, military	Exempt	Wheelbarrows	188-GMPR		
Shapers (metalworking)	1-67	Whistles, thunderer	188-GMPR		
Ships	Exempt	Wire and cable, electrical	82-136		
Sheets, bed	89-157-GMPR				
Shoes	157-210-GMPR				
Shoe repair equipment	136				
Shoelaces	GMPR				

¹ TMPR—Temporary Maximum Price Regulation; see following list for expiration date.

No.	Title	No.	Title	No.	Title
67	New machine tools.	141	Domestic raw shearlings and tanned shearlings for the armed forces.	204	Idle or frozen materials sold under Priorities Regulation #13.
68	Hide glue stock.	142	Retail prices for summer season commodities.	205	Sulphate of ammonia producers, importers and primary jobbers.
69	Primary lead.	143	Wholesale prices for new rubber tires and tubes.	206	Vitrified clay sewer pipe and allied products.
70	Lead scrap materials—secondary lead including calking lead; battery lead scrap; and primary, secondary antimonial lead.	144	Retail price for agricultural insecticides and fungicides.	207	Frozen fruits, berries and vegetables.
71	Primary and secondary cadmium.	145	Pickled sheepskins.	208	Staple work clothing.
72	Bunker C and No. 6 grade fuel oils, East and Gulf Coasts (Revoked).	146	Appalachian hardwood lumber.	209	Sales by canners of California sardines.
73	Feeding stuffs, fishmeal and fish scrap.	147	Bolts, nuts, screws, and rivets.	210	Retail and wholesale price for fall and winter seasonal commodities.
74	Feedingstuffs—animal product feeding-stuffs.	148	Dressed hogs and wholesale pork cuts.	211	Cotton ginning services.
75	Dead burned grain magnesite.	149	Mechanical rubber goods.	212	Frozen fruits, berries and vegetables at wholesale and retail.
76	Hide glue.	150	Milled rice.	213	Coff and flat bedsprings with nonsteel frames.
77	Beehive oven furnace coke produced in Pennsylvania.	151	New bags.	214	High alloy castings.
78	Carbon tetrachloride.	152	Canned vegetables.	215	Distribution yard sales of soft wood.
79	Oxalic acid.	153	Women's, girls and children's outerwear garments.	216	Railroad ties.
80	Lithopone.	154	Ice.	217	Walnut gunstock blanks.
81	Primary slab zinc.	155	Central hardwood lumber.	218	Central Appalachian wooden mine materials.
82	Wire, cable and cable accessories.	156	Certain beef and beef products purchased by certain Federal agencies.	219	Northeastern softwood lumber.
83	Radio receivers and phonographs.	157	Sales and fabrication of textiles, apparel and related articles for military purposes.	220	Certain rubber commodities.
84	Radio receiver and phonograph parts.	158	Resale of war bicycles—distributors and dealers.	221	Manufacturers' prices for fall and winter knitted underwear.
85	New passenger automobiles.	159	Fabricated concrete reinforcing bars.	222	Northern softwood lumber.
86	Domestic washing machines and ironers.	160	Seasonal wooden agricultural containers.	223	Northern hardwood lumber.
87	Scrap rubber.	161	West coast logs.	224	Cement.
88	Petroleum and petroleum products.	162	Sale and rental of used typewriters.	225	Printing and printed paper commodities.
89	Bed linens.	163	Woolen and worsted civilian apparel fabrics.	226	Fruit preserves, jams and jellies.
90	Rayon waste.	164	Red cedar shingles.	227	Dried fruits.
91	Tea.	165	Consumer service.	228	Flue-cured tobacco.
92	Soy bean and peanut oils.	166	Zinc oxides.	229	Retail and wholesale prices for victory line waterproof rubber footwear.
93	Mercury.	167	Rayon yarn and staple fiber.	230	Reusable iron and steel pipe.
94	Western pine lumber.	168	Converted rayon yarn and converting charges.	231	Raw spices and spice seeds.
95	Nylon hose.	169	Beef and veal at wholesale and packer levels.	232	Apple butter.
96	Domestic fuel oil storage tanks.	170	Anti-freeze.	233	Canned and dried apples and apple prod.
97	Southern hardwood lumber.	171	Nitrocellulose film scrap.	234	Approved stirrup pumps.
98	Titanium pigments.	172	Charges of contractors in apparel industry.	235	Manganese steel castings.
99	Acetyl salicylic acid.	173	Wheat millfeeds.	236	Heating boiler conversion parts.
100	Cast iron soil pipe and fitting.	174	Freight car materials sold by car builders.	237	Adjusted and fixed markup regulation for sales of certain food products at wholesale.
101	Citric acid.	175	Rough, rolled figured wire and heat absorbing rolled glass.	238	Same as above at retail.
102	Household mechanical refrigerators.	176	Rotary cut southern hardwood box lumber.	239	Lamb carcasses and whole, & retail cuts.
103	Salicylic acid.	177	Men's and boys' tailored clothing.	240	Florida land pebble phosphate rock and Tennessee brown phosphate rock.
104	Vitamin C.	178	Women's fur garments.	241	Malleable iron castings.
105	Gears, sprockets, pinions, speed reducers.	179	Pine oil.	242	Dried prunes and raisins.
106	Domestic shorn wool.	180	Color pigments.	243	Pitted and macerated domestic dates and domestic date products.
107	Used tires and tubes.	181	New formula condensed soups packed under WPB Conservation Order M-81.	244	Gray iron castings.
108	Nitrate of soda, sulphate of ammonia and cyanamid.	182	Kraft wrapping papers Kraft bag papers.	245	Shellac.
109	Aircraft sprue.	183	Territories and possessions.	246	Manu. and whole, prices for farm equip.
110	Resale of new household mechanical refrigerators.	184	Fresh, cured and canned meat and fish.	247	Domestic canned crabmeat.
111	Household vacuum cleaners.	185	Canned fruits and canned berries.	248	Manganese ores.
112	Pennsylvania anthracite.	186	Wooden containers—Western wooden agricultural containers.	249	Sales of certain seasonal food products at wholesale.
113	Iron ore produced in Minn., Wis., Mich.	187	Paperboard products.	250	Same as 249 at retail.
114	Woodpulp.	188	Manufacturers' maximum prices for specified building materials and consumers' goods other than apparel.	251	Construction and maintenance services and sales of building and industrial equipment and materials on an installed or erected basis.
115	Silk waste.	189	Bituminous coal sold for direct use as a bunker fuel.	252	Vinegar cured herring.
116	China and pottery.	190	Free cotton linters.	253	Redwood lumber and millwork.
117	Used egg cases and used component parts.	191	Cotton linters and hull fibers.	254	New small firearms and firearm parts.
118	Cotton products.	192	Imported cresylic acid.	255	Permitted increases for wholesalers of certain foods.
119	Original equipment tires and tubes.	193	Domestic distilled spirits.	256	Permitted increases for retailers of certain foods.
120	Bituminous coal.	194	Alask. #	257	Woodpulp produced in or sold into the states of Minn., Mich., and Wis.
121	Miscellaneous solid fuels delivered from producing facilities.	195	Industrial wooden boxes.	258	Chrome ores.
122	Solid fuels.	196	Turned or shaped wood products.	259	Domestic malt beverages.
123	Raw and processed wool waste materials.	197	Canned fruits and canned berries at wholesale and retail.	260	Cigars.
124	Rolled zinc products.	198	Imports of silver bullion.	261	Contract sales of finishing builders' hardware.
125	Nonferrous foundry products.	199	Lead bullet rod.	262	Seasonal and miscellaneous food commodities.
126	Fluorspar	200	Rubber heels, rubber heels attached and attaching of rubber heels.	263	New phonograph records and record scrap.
127	Finished piece goods.	201	Virgin Islands.	264	Industrial waxes.
128	Processing piece goods.	202	Brass and bronze alloy ingot.	265	Sales by canners of salmon.
129	Certain converted paper product.	203	Vitamin A natural oils and concentrates.	266	Certain tissue paper products.
130	Standard newsprint paper.			267	Sponges.
131	Camelback.				
132	Waterproof rubber footwear.				
133	Retail price for farm equipment.				
134	Construction and road maintenance equipment rental prices.				
135	Mixed fertilizer, superphosphate and potash.				
136	Machines and parts.				
137	Motor fuel sold at service stations.				
138	Standard ferromanganese.				
139	Used household mechanical refrigerators.				
140	Sanitary napkins.				

No.	Title
268	Sales of certain perishable foods at retail—potatoes, onions & turkeys.
269	Poultry and eggs.
270	Dry edible beans.
271	Sales of certain perishable foods, except at retail.
272	Cast iron boilers and cast-iron radiation.
273	Articles of apparel in which materials have been replaced.
274	Women's silk hosiery.
275	Extracted honey.
276	Asphalt tile.
277	Sales by canners of mackerel.
278	Totaquina and totaquina products.
279	Hops.
280	Specific food products.
281	Navy oak ship stock.
282	Certain private formula pharmaceutical proprietary drug and cosmetic products.
283	Burley tobacco.
284	Western primary forest products.
285	Imported fresh bananas, except at retail.
286	Certain sausage products for war procurement agencies.
287	Manu. prices for women's girls', and children's outerwear garments.
288	Specific maximum prices in Alaska.
289	Dairy products.
290	Sitka spruce lumber.
291	Certain syrups and molasses.
292	Sales of citrus fruits by packers, brokers, auction markets, terminal sellers and intermediate sellers.
293	Stock millwork.
294	Used household vacuum cleaners and attachments.
295	West coast ethyl alcohol.
296	Wheat flour.
297	Natural resins.
298	Rotenone.
299	Sales by canners of tuna, bonita and yellowtail.
300	Maximum manufacturers' prices for rubber drug sundries.
301	Retail and wholesale prices for rubber drug sundries.
302	Magnesium scrap and remelt magnesium ingot.
303	Frozen Canadian smelts.
304	Manufacturers' and wholesalers' prices for specified men's and boys' work and sport shirts.
305	Corn meal, corn flour, corn grits, hominy, hominy grits, brewers grits and other products made by a dry corn milling process.
306	Certain packed food products.
307	Waxed papers.
308	Connecticut shade grown (Type No. 61) tobacco.
309	Platinum group metals and their products.
310	Reusable structural steel shapes and plates, and shafting.
311	Sales by canners of shrimp.
312	Maple syrup.
313	Prime grade hardwood logs.
314	Magnesium and magnesium alloy ingot.
315	Lead arsenate.
316	Coated and bonded abrasive products.
317	Locks and lock sets.
318	Feathers and down.
319	Certain bakery products.
320	Eastern and central wooden agricultural containers.
321	Feldspar fire extinguishers.
322	Alfalfa hay—California, Oregon and Washington.
323	Asphalt and asphalt products.
324	Northern white cedar fence posts.
325	Rayon tops and nolls.
326	Macaroni products and noodle products.
327	Certain nonmetallic minerals.
328	Canned Eastern and Gulf oysters.
329	Purchase of milk from producers for resale as fluid milk.

No.	Title
330	Retailers' and wholesalers' prices for women's, girls' and children's outerwear garments.
331	Soybeans.
332	Simplified men's and boys' shirts and pajamas.
333	Eggs and egg products.
334	Rabbits.
335	Peanuts and peanut butter.
336	Retail ceilings on pork cuts.
337	Frozen lake smelts.
338	Aircraft veneer.
339	Women's rayon hosiery.
340	Jute and istrle yarn, rove and rope. (Not yet issued).
342	Nail kegs, staves and headings.
343	Salt cured herring.
344	New cotton linen and underwear cuttings.
345	Thermoplastic scrap.
346	Corn.
	Temporary Maximum Price Regulations—(Will be replaced by permanent regulation before expiration dates).
TMPR 1-25	Expired.
TMPR 26	Onion sets (expires April 18, 1943).
TMPR 27	Broomcorn (expires April 26, 1943).
TMPR 28	Certain perishable fruits and vegetables (carrots, tomatoes, snap beans, peas, cabbage) (expires April 24, 1943).
TMPR 29	Certain perishable vegetables (spinach and lettuce) (expires April 26, 1943).
	MISCELLANEOUS MATTERS
	Section 81.1101 is redesignated § 81.1180 as follows:
	* * * § 81.1180 <i>Discounts in purchasing.</i>
	Section 81.1107 is redesignated § 81.1181 as follows:
	* * * § 81.1181 <i>Contingent fees.</i> * * *
	Section 81.1114 is redesignated § 81.1182 as follows:
	* * * § 81.1182 <i>Track-scaling of loaded railroad cars.</i> * * *
	Section 81.1116 is redesignated § 81.1183 as follows:
	* * * § 81.1183 <i>Ordering of spare parts.</i>
	Section 81.1102 is redesignated § 81.1184 as follows:
	* * * § 81.1184 <i>Contracts with foreign nationals.</i>
	Section 81.1103 is redesignated § 81.1185 as follows:
	* * * § 81.1185 <i>Contracts with blocked nationals.</i>
	Section 81.1104 is redesignated § 81.1186 as follows:
	* * * § 81.1186 <i>Limitation on purchase of arms, ammunition and implements of war.</i>
	Renegotiation and Price Adjustment
	Sections 81.1201 to 81.1228, inclusive, are rescinded and the following §§ 81.1200 to 81.1291, are substituted therefor.
Sec.	
81.1200	Scope of Regulation.
	STATUTORY RENEgotiation
81.1201	Scope of Section.

RENEGOTIATION STATUTE AND EXEMPTIONS

Ses.
81.1202 Statutory provisions.
81.1203 Effect of Act.
81.1204 Exemptions from statutory renegotiation.

CONTRACT ARTICLES FOR STATUTORY RENEgotiation

81.1207 Articles authorized; deviations.
81.1208 Use of articles.
81.1209 Deviations.
81.1210 Use of other articles.

CONTRACT ARTICLES FOR PRICE ADJUSTMENT ON THE BASIS OF PRODUCTION EXPERIENCE

81.1220 Scope.
81.1221 Effect of articles.
81.1222 Relation to other price adjustment articles.
81.1223 Price redetermination by formula.
81.1224 Negotiated revision of entire contract price—upward or downward.
81.1225 Article for converting fixed-fee contracts to fixed price basis.
81.1226 Incentive provisions for fixed-fee contracts.

CONTRACT PROVISIONS FOR PRICE ADJUSTMENT UPON CONTINGENCIES AND SHORT-TERM PRICING

81.1230 Scope.
81.1231 Changes article.
81.1232 Escalation.
81.1233 Interruption of production schedules by Government action.
81.1234 Operation of articles.
81.1235 Article for short term pricing.
81.1236 Periodic adjustment of price without provision for exemption from renegotiation.

CONTRACT ARTICLES FOR PERIODIC READJUSTMENT OF PRICE AND EXEMPTION FROM RENEgotiation

81.1240 Articles authorized.
81.1241 Effect of articles.
81.1242 Purpose of articles.
81.1243 Use of articles.
81.1244 Insertion of statutory renegotiation article.
81.1245 Changes in termination article.
81.1246 Price adjustments under the articles.
81.1247 Inserting articles in existing contracts.

PRICE ADJUSTMENTS WITHOUT CONTRACT PROVISIONS

81.1250 Scope.
81.1251 Amendments with consideration.
81.1252 Amendments without consideration.

APPENDIX

81.1290 Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 (Public 528, 77th Congress), approved April 28, 1942, as amended by the section 801 of the Revenue Act of 1942 (Public 753, 77th Congress) approved October 21, 1942.

81.1291 Joint regulation.

RENEGOTIATION AND PRICE ADJUSTMENT

§ 81.1200 *Scope of Regulation*—(a) General. This Regulation No. 12¹ deals with policies and contract provisions of all types relating to the adjustment of prices under contracts with the War Department and subcontracts thereunder. Sections 81.1201-81.1210 deal with the contract provisions and procedure for statutory renegotiation under section 403 of the Sixth Supplemental National

¹ Procurement Regulation No. 12 includes §§ 81.1200 to 81.1291, inclusive.

Defense Appropriation Act, 1942, as amended. Sections 81.1220-81.1247 discuss various optional clauses providing for price adjustment independently of statutory renegotiation. Sections 81.1250-81.1252 discuss the adjustment of prices under the First War Powers Act in order to adapt contracts to changing conditions and to relieve contractors from hardship. These contract clauses and policies are intended to carry out the general purchase policies stated in §§ 81.201-81.294, inclusive.

(b) *Regulations rescinded.* Temporary Procurement Regulations 10-T and 17-T, issued April 30, 1942 and May 11, 1942, by Headquarters, Services of Supply, and all other prior directives and instructions relating to contract provisions for revision and renegotiation of contract prices are hereby rescinded.

STATUTORY RENEgotiation

§ 81.1201 *Scope of section.* (a) Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 (Public 528, 77th Congress, approved April 28, 1942) as amended by section 801 of the Revenue Act of 1942 (Public 753, 77th Congress, approved on October 21, 1942), which provides for renegotiation of certain war contracts and subcontracts, is called "section 403, as amended", and "the Act" in this Regulation, and renegotiation pursuant to its provisions is called "statutory renegotiation".

(b) Sections 81.1201-81.1210 and additional sections now in preparation discuss the various aspects of statutory renegotiation, in three parts. (1) Sections 81.1202-81.1204 deal with the provisions of section 403, as amended, and the exemptions and exclusions therefrom. (2) Sections 81.1204-81.1207 discuss the contract articles for statutory renegotiation and their use. (3) Sections are in preparation which deal generally with the policies and procedure governing statutory renegotiation.

RENEGOTIATION STATUTE AND EXEMPTIONS

§ 81.1202 *Statutory provisions—(a) Renegotiation Act.* The full text of subsections (a) to (l) of section 403, as amended, is set forth in paragraphs (a) to (l), inclusive, of § 81.1290.

(b) *Section 3806 of the Internal Revenue Code.* Section 3806 of the Internal Revenue Code referred to in subsection (c) (3) of section 403, as amended, is set out in paragraph (j) of § 81.1290. Under that section the amount of federal income and excess profits taxes paid or payable with respect to any excessive profits must be credited against the amount of such profits in computing the amount to be refunded by the contractor or subcontractor, or otherwise recovered.

§ 81.1203 *Effect of Act—(a) Coverage.* (1) The Act applies to all contracts made by the War, Navy and Treasury Departments and the Maritime Commission (called herein Departments) and subcontracts thereunder, with the exceptions stated under paragraph (d) of this section and § 81.1204. With those exceptions, the Act directs the Secretary of each Department to

require any contractor with his Department or subcontractor thereunder to renegotiate the contract price with him whenever in his opinion the profits realized or likely to be realized from the contract or subcontract may be excessive, whether or not the contract or subcontract contains a renegotiation clause.

(2) Subcontracts include purchase orders or agreements to perform all or any part of the work, or to make or furnish any article, material, part, assembly, machinery, equipment or other personal property, required for the performance of another war contract or subcontract. Such subcontracts are not limited to those made by the prime contractor but include those made by subcontractors and sub-subcontractors down through the various tiers unless specifically exempt. (Subsections (a) and (c), paragraphs (a) and (c) of § 81.1290)

(b) *Contract articles.* With certain exceptions discussed under § 81.1204, the Act requires that each prime contract over \$100,000 contain a contract article (1) providing for renegotiation of the price and (2) requiring the contractor to insert a similar article in each subcontract over \$100,000 made by him. As stated in paragraph (a) of this section, contracts or subcontracts which do not include a renegotiation article are nevertheless subject to the Act unless they are expressly excluded.

(c) *Administration of renegotiation.* Subsections (c) to (f) of the Act provide for its administration. The principal provisions are as follows:

(1) In his discretion, the Secretary may renegotiate with a contractor or subcontractor holding two or more contracts or subcontracts to eliminate excessive profits on some or all of them as a group without separately renegotiating the contract price of each of them (Subs. (c) (1)).

(2) The Act specifies that excessive costs shall not be allowed, but properly applicable exclusions and deductions of the character allowed under Chapters 1 and 2E of the Internal Revenue Code shall be recognized, and credit shall be given for Federal income and excess profits taxes in accordance with section 3806 of the Internal Revenue Code (Subs. (c) (3)). Subsections (d) and (e) give extensive powers to obtain information and statements.

(3) The Secretary is directed to eliminate excessive profits (i) by reductions in price and other contract revisions; (ii) by withholding from amounts otherwise due, any amount of such excessive profits; (iii) by directing a contractor to withhold for the account of the United States from amounts otherwise due the subcontractor any amount of such excessive profits; (iv) by recovery by repayment, credit or suit, of any amount of excessive profits actually paid; or (v) by any combination of these (Subs. (c) (2)).

(4) The Secretary is authorized to make final or other agreements for the elimination of excessive profits and for the discharge of any liability under the Act. They may cover past or future periods and are final according to their terms and may not be reopened except

for fraud, malfeasance or wilful misrepresentation (Subs. (c) (4)).

(5) The Secretary may delegate his authority and discretion under the Act within his own or another Department (Subs. (f)).

(d) *Exclusions.* (1) The Act does not apply to any contract or subcontract on which final payment was made before April 28, 1942 (Subsection (c) (6), paragraph (c) of § 81.1290).

(2) A contract or subcontract is not subject to statutory renegotiation where the aggregate sales of the contractor or subcontractor and its affiliates (including all persons controlling, controlled by, or under common control with it) under all such contracts and subcontracts do not or, in the opinion of the Secretary, will not exceed \$100,000 during its fiscal year (Subsection (c) (6), paragraph (c) of § 81.1290).

(3) Certain contracts or subcontracts are exempt or may be exempted from the statute under subsections (b) and (i) of the Act (Paragraph (b) and (i) of § 81.1290). These exemptions are discussed under § 81.1204.

(e) *Limitations on time for commencing renegotiation.* The statute contains the following provisions limiting the time for commencing renegotiation.

(1) *Individual contracts.* Under subsection (c) (6) of the Act renegotiation of a contract or subcontract must be commenced within one year after the close of the contractor's fiscal year in which the contract is completed or terminated, as determined by the Secretary of the Department.

(2) *Fiscal Year.* Under subsection (c) (5) of the Act, a contractor or subcontractor may obtain clearance for a prior fiscal year by filing such financial and cost statements for that year, in such form and detail, as the Secretaries prescribe by joint regulation. Unless the Secretary gives notice to renegotiate within one year from the date of filing, and commences renegotiation within sixty days of such notice, the contractor or subcontractor may not be required to renegotiate for that fiscal year.

(3) *Contractual.* Under subsection (b) of the Act, in the discretion of the Secretary, the contract may limit the period within which renegotiation may be had.

(4) *Expiration of the Act.* Subsection (h) of the Act provides that it shall remain in force during the war and for three years thereafter, but that court proceedings do not abate upon its termination.

§ 81.1204 *Exemptions from statutory renegotiation—(a) Statutory provisions—(1) Mandatory exemptions.* Under subsection (1) of section 403 (1), the Act does not apply (i) to certain governmental contracts and (ii) to contracts and subcontracts for certain raw materials. These exemptions are set out in § 81.1290 (1) and discussed in paragraphs (c) and (d) of § 81.1204.

(2) *Discretionary exemptions.* Under subsections 403 (b) and (1) (2) the Secretary of a Department or his authorized representative may exempt from part or all of the Act any contracts or subcon-

tracts (i) to be performed outside of the United States, or in Alaska, or (ii) under which the profits can be determined with reasonable certainty when the contract price is established, or (iii) to the extent that the provisions of the contract are otherwise adequate to prevent excessive profits. Such exemptions may be made by individual contracts and subcontracts or by general classes or types, and may cover only a part of the contract or subcontract or of the performance thereunder. (See paragraphs (b) and (i) of § 81.1290). These exemptions are discussed in paragraphs (b) and (e) et seq. of this section.

(b) *Delegations of discretionary power to exempt.* The discretion to grant exemptions under section 403 (b) and 403 (i) (2) is delegated to the supply services only to the extent provided in the following paragraphs. Where these paragraphs authorize the chief of a supply service to make such exemptions then:

(1) He may personally exempt general classes or types of contracts or subcontracts within the specified categories but each such exemption shall be forwarded to the Director, Purchases Division, Headquarters, Army Service Forces, for publication in these procurement regulations and shall become effective only after such publication;

(2) He may personally exempt such contracts or subcontracts individually (See § 81.1208 (d); or

(3) He may redelegate to officers or civilian officials in his service the discretion to make such exemptions of individual contracts if, but only if, he prescribes standards for the exercise of such discretion, approved by the Director, Purchases Division, Headquarters, Army Service Forces.

(c) *Contracts with governmental agencies.* (1) In this regulation the term "Department" means the War, Navy and Treasury Departments and the Maritime Commission; and the term "other Government agency" includes (i) any department, bureau, agency or governmental corporation of the United States, except one of the Departments, (ii) any territory, possession or state or any agency thereof, and (iii) any foreign government or any agency thereof.

(2) Section 403 as amended does not apply to (i) any contract between a Department and any other Government agency; (ii) any contract between a contractor with a Department or a subcontractor thereunder, and any other Government agency; (iii) any contract made by the other Government agency in connection with a contract with one of the Departments, or one of their contractors, or subcontractors, unless the other Government agency is acting merely as an agent for the Department concerned (Subs. (i) (1) (i)).

(3) Thus no contract between the War Department or one of its contractors or subcontractors and the Defense Supplies Corporation, the Defense Plant Corporation, the Metals Reserve Company, Rubber Reserve Company or similar agencies is subject to statutory renegotiation. Likewise no contract made by such Government corporations or agencies, even though made in connection with a War

Department contract or subcontract, is subject to statutory renegotiation unless made solely as agent for one of the Departments named in the Act.

(4) Accordingly, no article for statutory renegotiation under section 403, as amended, will be included in any such contract or subcontract.

(d) *Contracts and subcontracts for raw materials.* (1) By subsection 403 (i) (1) (ii), the Act does not apply to

(ii) any contract or subcontract for the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, which has not been processed, refined, or treated beyond the first form or state suitable for industrial use; and the Secretaries are authorized by joint regulation, to define, interpret and apply this exemption.

Under this authority the Secretaries have issued a joint regulation interpreting the exemption and specifying certain commodities which are within its terms. The text of this regulation is contained in § 81.1291.

(2) This exemption also extends to all contracts made in connection with the performance of any such exempt contract or subcontract for raw materials.

(3) No article for statutory renegotiation under Section 403 as amended will be included in any contract or subcontract for one of the exempted products. (See paragraphs (c) and (d) of § 81.1209.)

(e) *Contracts and subcontracts outside of the United States.* (1) The chief of a supply service is authorized, in his discretion, to exempt from some or all of the provisions of section 403, as amended, any contract with his supply service, or any subcontract thereunder, which is to be performed outside of the territorial limits of the continental United States, or in Alaska. This authority applies to existing as well as future contracts and subcontracts.

(2) War Department Circular No. 43, February 9, 1943, delegated to each commanding general outside of the United States or in Alaska, like authority with respect to contracts made or administered under his authority, and subcontracts thereunder.

(3) When a contract is exempted under this paragraph, Form II (§ 81.342 (b)) will be inserted in it unless all subcontracts thereunder have also been exempted.

(f) *Patent Licenses.* The chief of a supply service may exempt from some or all of the provisions of section 403, as amended, any contract granting to the Government a license under a patent or a patent application or transferring a patent or patent application to the Government, if the aggregate royalty payable under the contract for its duration or for any stated period is either (i) a fixed amount determinable at the time of the execution of the contract, or (ii) limited by contract to a maximum amount determinable at the time of the execution of the contract, and if, in his opinion, the fixed amount or maximum amount will not yield excessive profits to the contractor. In all other cases, the renegotiation article will be included in the contract. In such cases subsections (a), (b), (c) and (f) (1), (3) and (4)

of Form I (see § 81.342 (a)) will be used. (See also § 81.1112.)

(g) *Exemption from renegotiation in connection with periodic adjustment of price.* Sections 81.1240-81.1247 authorize the use under certain conditions of contract articles providing for periodic adjustment of price and corresponding exemption from renegotiation. Where these contract articles are used, the contracting officer in charge of the contract is authorized in his discretion to grant exemption from renegotiation in accordance with the contract provisions and the related procurement regulations.

CONTRACT ARTICLES FOR STATUTORY RENEGOVITATION

§ 81.1207 *Articles authorized; deviations.* Standard forms of contract articles approved for use in accordance with this regulation to satisfy the statutory requirements set forth in § 81.1290 (b) are contained in paragraphs (a) and (b) of § 81.342 of these Regulations. The article set forth in § 81.342 (a) is hereafter called "Form I" and the article in § 81.342 (b) is hereafter called "Form II". Except as expressly authorized in this Regulation or subsequent instructions, deviations from the standard articles will not be used.

§ 81.1208 *Use of articles—(a) Fixed price contracts.* Subject to § 81.1204 et seq., Form I will be included in all fixed price or lump sum contracts hereafter made for an amount in excess of \$100,000.

(b) *Fixed fee contracts.* Subject to § 81.1204 et seq., Form I will be included in every fixed-fee contract, where the amount of the estimated cost plus the fixed-fee is in excess of \$100,000. In using Form I in fixed-fee contracts, the words "fixed fee specified in Article * * * will be substituted for the term "contract price" in paragraphs (a) and (c).

(c) *Supplemental agreements.* With respect to supplemental agreements (which as used herein include change orders) the following principles will be observed:

(1) Subject to § 81.1204 et seq., every supplemental agreement for an amount in excess of \$100,000 will include either Form I or Form II, whichever is appropriate, unless the contract to which the supplemental agreement relates contains an adequate renegotiation article which will apply to the supplemental agreement.

(2) If the chief of the supply service determines that it will be practicable to renegotiate the contract price of the supplemental agreement separately, the renegotiation article may be limited in its application to the supplemental agreement; otherwise, the renegotiation article included in the supplemental agreement will be made to apply to the original contract as well as the supplemental agreement.

(3) When Form I is to be limited to the supplemental agreement, subsection (4) of section (f) will be omitted and the following section will be added to the Article:

(g) This Article applies only to the supplemental agreement by which it was added

(as modified from time to time), and shall be construed accordingly: (1) the term "this contract" means that supplemental agreement; (2) the term "the contract price" means the price provided by that supplemental agreement; and (3) the obligation of the Contractor under section (d) to insert renegotiation provisions in subcontracts applies only to subcontracts made under that supplemental agreement.

(4) When Form II is to be limited to the supplemental agreement, subsection (4) of section (c) will be omitted, and the following section will be added to the Article:

(d) This Article applies only to the supplemental agreement by which it was added (as modified from time to time), and shall be construed accordingly: (1) the term "this contract" means that supplemental agreement; and (2) the obligation of the Contractor under section (a) to insert renegotiation provisions in subcontracts applies only to subcontracts made under that supplemental agreement.

(5) When the renegotiation article (Form I or Form II) is to apply to the original contract, as well as to the supplemental agreement, the Article will be added to the original contract by the supplemental agreement and the first sentence of section (d) of Form I or of section (a) of Form II, whichever is used, will be modified to read as follows:

The Contractor will include in each subcontract for an amount in excess of \$100,000 made under this contract after the date of the supplemental agreement which added this Article, the following provisions:

By this change the obligation of the contractor to insert renegotiation provisions in subcontracts will be limited to those made after the date of the supplemental agreement which adds the Article to the original contract.

(6) When the contract to which the supplemental agreement relates contains a renegotiation article, but its inadequacy requires insertion of the article in the supplemental agreement, and that article is limited to the supplemental agreement, the supplemental agreement may provide that in case of any conflict between the article in the original contract and the article in the supplemental agreement, then the article in the supplemental agreement shall govern.

(d) *Exempt contracts.* When a contract or subcontract is exempt from statutory renegotiation under § 81.1204 (c) or (d), no article for statutory renegotiation pursuant to paragraphs (e) to (g), inclusive, of § 81.1204, Form I will be omitted from the contract, but Form II will be inserted unless all subcontracts under the contract will also be exempt from renegotiation under § 81.1204. When a contract or subcontract is individually exempted from Section 403, as amended, it will contain a statement showing (1) the extent of the exemption, (2) by whom it was granted, and (3) the provision of section 403, as amended, on which the exemption is based.

§ 81.1209 *Deviations*—(a) *Substitution of article for prior form.* Where a renegotiation provision pursuant to

section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, has been included in a contract in a form different from that herein prescribed, the contracting officer is authorized to amend the contract to substitute the form herein prescribed for the earlier form if the contractor so desires.

(b) *Fixed fee subcontracts.* When the prime contractor makes a fixed-fee subcontract, the subcontract article for renegotiation will be revised by substituting the words "fixed-fee, hereunder" for the term "contract price" in sections (1) and (3).

(c) *Optional provision in subcontracts.* Where a contractor with the War Department or a subcontractor thereunder is required by his contract to insert a renegotiation article in his subcontracts, and there is doubt (1) whether an agreement or order which he proposes to make or place is a subcontract under the Act, or (2) whether it is exempt from renegotiation under subsection (i) of the Act, he should insert the prescribed renegotiation article in the agreement or order, but may add the following additional provision at the end of the article:

(7) This article shall apply to this contract only if it is a "subcontract" subject to renegotiation under section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended by section 801 of the Revenue Act, 1942.

The authority to use this additional provision in accordance with this paragraph may be expressly added to the renegotiation article (§ 81.342 (a) or (b)) in any existing or future contract if it is so desired; but this authority may be used whether or not the contract or subcontract so provides.

(d) *Contracts for raw material products whose status under section 403 (i) (1) (ii) is uncertain—optional provision.* As stated in § 81.1204 (d), contracts for certain raw materials are exempt under subsection 403 (i) (1) (ii), and the Secretaries are authorized by joint regulation to define, interpret, and apply this exemption. Wherever a contract with the War Department covers the product of a mine, oil or gas well, or mineral or natural deposit or timber, and it is uncertain whether or not the product is within this exemption or joint regulation, the contract should include the standard renegotiation article if otherwise required but the following additional provision may be added at the end of the article:

(g) If any joint regulation issued pursuant to subsection (i) (1) (ii) of section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, defines, interprets, or applies that subsection (i) (1) (ii) to exempt from the provisions of said section 403, as amended, contracts for any product or products covered by this contract, then the contract price for such product or products, if separately stated herein, shall not be subject to renegotiation under this article.

§ 81.1210 *Use of other articles.* Statutory renegotiation under the contract articles discussed in § 81.1201 et seq. is for the purpose of preventing or eliminating excessive profits and is handled

by the Price Adjustment Board and Price Adjustment Sections. As authorized by the Act, it is generally conducted on an over-all basis for the contractor's fiscal year rather than by individual contracts. Various other clauses discussed in the following sections designed to provide for adjustment of the price of the specific contract to meet various types of conditions, may be used in addition to the contract articles for statutory renegotiation.

CONTRACT ARTICLES FOR PRICE ADJUSTMENT ON THE BASIS OF PRODUCTION EXPERIENCE

§ 81.1220 *Scope.* In certain cases the cost of production under a contract cannot be estimated with reasonable accuracy at the time of its execution. For example, the item may be entirely new or the particular contract may lack experience with its production or its design may still be experimental or subject to radical changes or development. This section deals with contract provisions designed to meet these situations by adjusting the price on the basis of production experience after part performance. It includes articles for (a) price redetermination by formula, (b) price revision by negotiation, (c) conversion of fixed-fee contracts to fixed price contracts and (d) incentive adjustments in fixed-fees.

§ 81.1221 *Effect of articles.* The effect of these various articles and the differences between them are briefly as follows:

(a) *Redetermination by formula.* Under this article (§ 81.341 (a)) an itemized estimate of costs is stated in the contract. After a specified percentage of the work under the contract is completed the contractor is required to submit similarly itemized statements of the cost of a "preliminary run" and a "test run". Then the original price is reduced, not by negotiation but by formula reflecting the extent to which the total costs as indicated by the preliminary and test runs are less than the original estimate of costs.

(b) *Negotiated revision of entire price.* Under this article (§ 81.341 (b)) the entire contract price may be revised either upward or downward by negotiation in good faith after a specified part of the contract has been performed. The revised price applies both to past and future performance. It differs from redetermination (1) by relying on negotiation instead of a formula for making the adjustment and (2) by permitting adjustment upward as well as downward.

(c) *Conversion of fixed-fee to fixed-price contracts.* Two articles apply only to fixed-fee contracts. One of these provides for converting the fixed-fee contract to a fixed price contract by negotiation after part performance.

(d) *Fixed-fee incentive provisions.* The other article for fixed-fee contracts (§ 81.341 (d)) provides for adjustments in the fee either upward or downward on the basis of efficiency in performance.

§ 81.1222 *Relation to other price adjustment articles.* (a) The articles discussed in §§ 81.1220-81.1226 are distinct from those for statutory renegotiation

under section 403, as amended. While statutory renegotiation is intended to eliminate excessive profits and is generally conducted on an over-all fiscal year basis, the articles in this section contemplate readjusting the price of the individual contract during its performance on the basis of production experience. These articles are for use in addition to statutory renegotiation provisions which must also be included in the contract in accordance with § 81.1208, unless the contract is exempt from renegotiation (see § 81.1204).

(b) Likewise, the articles in §§ 81.1220-81.1226, which assume a general uncertainty as to production costs when the contract is made, differ in purpose and scope from the articles covered by §§ 81.1230-81.1236 which provide for price adjustments to meet specific kinds of contingencies. In appropriate cases, however, both types of article may be included in the same contract.

(c) These articles also differ from those discussed in §§ 81.1240-81.1247. While those provide for exemption from statutory renegotiation, the articles in §§ 81.1220-81.1226 do not so provide and also contemplate only one revision in the price and not its periodic adjustment. Furthermore, the articles for periodic adjustment of price assume reasonable certainty as to costs, while those in §§ 81.1220-81.1226 are for cases of great uncertainty in costs.

§ 81.1223 Price redetermination by formula—(a) Article authorized. The article for price redetermination by formula set out in § 81.341 (a) is authorized for use in accordance with this regulation. Minor deviations may be made in this article but it will never be changed to allow redetermination of the price upward. When upward as well as downward price adjustment is desired, the article discussed in § 81.1224 will be used.

(b) *Use and operation of article.* In using and operating this article for price redetermination the following principles will be observed:

(1) Before agreeing to the use of this article the contracting officer will analyze or examine the cost accounting system of the contractor to satisfy himself that it is sufficiently accurate to permit the effective operation of this article.

(2) The "preliminary run" is intended to cover the initial performance while production is getting under way and before costs have become stabilized. Accordingly it should include the percentage of the work or period which the contracting officer estimates will be needed before costs level off and become reasonably typical. The "test run" should cover an adequate period after such costs are expected to become reasonably stable. Unless these two periods will be completed before forty per cent of the contract is performed this article will not be used without special permission from the Director, Purchases Division, Headquarters Army Service Forces.

(3) After the contractor submits the itemized statements of costs for the

"preliminary run" and for the "test run" the contracting officer should make sufficient check to satisfy himself that they are accurate and reliable. If necessary he may examine the books and records of the contractor for this purpose.

(4) On the basis of the statements submitted and any other data obtained from the books and records of the contractor or otherwise, the contracting officer should determine the total costs for the "preliminary run" and for the "test run" and for the remainder of the contract. This should be done objectively as a factual determination. If the contractor disagrees with the decision of the contracting officer he may appeal under the Disputes Article. The contract price should be reduced by the difference between the total costs as so determined and the original estimated costs.

(5) Upon redetermination of the price, amounts paid for items theretofore delivered in excess of the new price shall be refunded to the Government or applied against subsequent deliveries, as the contracting officer may direct. The new price and provisions for refunds will be evidenced by a supplemental agreement.

§ 81.1224 Negotiated revision of entire contract price—upward or downward—(a) Article authorized. The article for a negotiated price revision set out in § 81.341 (b) is authorized for use in accordance with this regulation. Under this article the contract price for past and future deliveries is revised upward or downward by negotiation after a specified part of the contract has been performed. This will be used only in special cases where the developmental or experimental nature of the item or the lack of previous production experience with it or other causes, prevent reliable estimates of costs when the contract is made and make it essential to provide in the contract for later revision of the initial price in the light of actual production experience. Minor deviations may be made in this article, but it will never be changed to obligate the Government to increase the price on the basis of costs or any other formula, or to do more than negotiate in good faith to revise the price.

(b) *Use and operation of article.* In using and operating this article (§ 81.341 (b)) the following principles will be observed:

(1) When the article is to be used the contracting officer will satisfy himself that the cost accounting system of the contractor is sufficiently accurate to provide reasonable information as to costs of production experienced in performing the contract.

(2) The time fixed in the contract for negotiation to revise the price will depend upon the circumstances in each case. The period before revision should be sufficient to allow costs to become reasonably stable and capable of estimation with reasonable accuracy, but it should not be longer than is necessary for this purpose. Generally, performance of about twenty per cent of the contract should be an adequate trial period; in

no case will the trial period exceed forty per cent of the contract without special permission from the Director, Purchases Division, Headquarters, Army Service Forces.

(3) In return for the agreement by the Government to negotiate to revise the price upward the contractor will be required to eliminate from the original prices substantially all allowances for contingencies.

(4) When the contractor submits the statements of costs for the trial period and estimates for the remainder of the contract, the contracting officer will make a sufficient check to satisfy himself that they are reasonably accurate and reliable. If necessary he may examine the books and records of the contractor for this purpose.

(5) Negotiations to revise the price should be conducted upon much the same basis as an original contract negotiation when like information on costs is available. Consideration will be given to all pertinent factors which have affected the contractor's costs during the trial period or which are likely to affect such costs during the remainder of the contract, and to all pertinent factors bearing upon the profit margin which it is reasonable for the contractor to earn under the circumstances, including the fact that the contract article reduces certain of the risks of performance. As a standard the contracting officer should estimate costs of producing the item in the contractor's plant by efficient management and operation, plus a reasonable profit. If the contracting officer concludes that the contractor's operations are inefficient and that his costs are high, he will limit the revised price accordingly; on the other hand, if the contractor has reduced his costs by skillful management, careful buying or efficiency of production, the contemplated margin of profit under the contract may be increased in recognition of these facts. The contracting officer should bear in mind that the costs of production during the first part of the contract will almost always be substantially higher than those during the remainder of the contract. Consequently average costs during the trial period are generally not an accurate index of the costs for the remainder of the contract. Allowance should be made for this fact in fixing the revised prices.

(6) A revised price will be evidenced by a supplemental agreement, which will also provide for making appropriate credits or payments by the contractor or payments to him for the difference between the prices actually paid for items theretofore delivered and the revised price.

§ 81.1225 Article for converting fixed-fee contracts to fixed price basis—(a) Use of article. In accordance with § 81.232(c), fixed-fee contracts will include, whenever feasible, the article set out in § 81.341 (c) providing for conversion to a fixed price basis by negotiation after part performance. The time specified for conversion should be the earliest at which sufficient experience and cost data will be available to fix a fair price.

Where possible, existing contracts will be amended to include this article.

(b) *Basis of conversion.* Such conversion is simpler if the fixed price basis is substituted for the entire contract, including past as well as future performance, and not merely for the remainder of the contract. When this is done, the price should be negotiated on the basis of the earlier experience, with appropriate allowance for declining costs, and should be fixed to yield approximately the cost plus the proportionate part of the fee for the past performance and a fair profit for the remainder of the contract. All previous payments made to the contractor should be applied against the amount due or to become due under the converted contract, or as advance payments, or partial payments against amounts to become due under it. By this method it will be unnecessary to evaluate the work in process or materials on hand, which will then assume their ordinary status under a fixed price contract, subject to any interest of the Government retained as security for advance or partial payments or for other purposes in accordance with the agreement to convert.

§ 81.1226 *Incentive provisions for fixed-fee contracts*—(a) *Use of article.* Paragraph (d) of § 81.341 sets out an article providing for increasing or reducing the fixed-fee under cost-plus-a-fixed-fee contracts on the basis of efficiency in performance. Under it the fee is adjusted by comparing a target estimate of costs fixed after part performance with actual costs for the same period. This article is designed to provide incentives for reductions in costs and efficient operations under such contracts, and will be used wherever feasible if conversion of the contract to a fixed price basis is not practical.

(b) *Operation of article.* In the operation of this article § 81.341 (d) the following principles will be observed:

(1) The trial or test period specified in the contract should be sufficient to allow costs of production to become reasonably stable and to provide reliable data on production costs.

(2) In fixing the estimate of costs for the remainder of the contract, the contracting officer will take into account the fact that costs during the first part of the contract will not necessarily be typical for the remainder.

(3) The increase or reduction in the fee will be based on the amount by which costs during the remainder of the contract have been reduced or increased by the efficiency or inefficiency of the contractor. In determining this amount the contracting officer will make allowance for changes in costs resulting from other causes.

(4) The amount of the increase or decrease of the fee shall be evidenced by supplemental agreement.

CONTRACT PROVISIONS FOR PRICE ADJUSTMENT UPON CONTINGENCIES AND SHORT-TERM PRICING

§ 81.1230 *Scope.* Frequently at the time the contract is negotiated, cost data and experience are sufficient to permit

the fixing of a fair price on the basis of existing conditions, but some of the elements of cost which are not under the control of the contractor are expected to change during the life of the contract. Under such circumstances the contractor will seek to include in his price allowances to protect himself against such changes unless the Government agrees to adjust the price to compensate for them if they occur. It is therefore necessary in each case to decide which course is more to the advantage of the Government in the particular instance. Sections 81.1230-81.1236 deal with various types of contract provisions under which the Government assumes certain of the risks of such changes in conditions. When they are used the contractor will be required to eliminate from the price any allowances to cover such contingencies.

§ 81.1231 *Changes article.* The standard contract article for changes allows the Government to modify the specifications or shipping and packing instructions by written order and provides for an equitable adjustment if such changes cause increases or decreases in the amount due under the contract or the time required for its performance. Often, however, it is necessary for the Government to increase or decrease the quantity to be delivered under the contract in order to conform to changes in needs, material allotments and other factors. To facilitate such variations a modified form of the "Changes" article has been authorized by § 81.329a, which allows the Government to reduce or enlarge the quantity to be delivered under the contract within prescribed limits and provides for an equitable adjustment in price either up or down depending on the effect of the change.

§ 81.1232 *Escalation*—(a) *Based on indices.* During the early stages of the procurement program a standard escalator clause providing for price adjustments on the basis of general indices for various classes of labor and materials was authorized to protect contractors against serious inflationary price and wage rises during performance. With the greater stability of wages and material prices the need for such escalator clauses has decreased. Since the administration of such clauses is complex and requires extensive accounting and auditing, authority for their use has been rescinded and they will therefore not be included in contracts hereafter negotiated.

(b) *For Government-fixed prices.* In cases where the Government directly fixes the price of a component material required for the performance of a contract, the contract may include a provision for equitable adjustment of the contract price to compensate for changes made by the Government in the price of the component material. (See § 81.351 (a).) This article will not be used where the Government merely fixes a maximum price for the component material, as by the Office of Price Administration. It will be used only where the Government fixes the actual sale

price as in the case of rubber sold by the Rubber Reserve Company. Likewise, a provision may be included for adjustment based on increased freight rates fixed by the Interstate Commerce Commission (§ 81.339) when such a provision does not violate any maximum price regulation of the Office of Price Administration. Finally § 81.357 contains a provision for price adjustment based on changes in certain taxes paid by the contractor.

(c) *Adjustment based on allocations.*

(1) In the case of certain commodities such as cotton duck and certain classes of lumber, the Government controls the entire supply and allocates production sources among contractors. Where this is the case, the actual price paid by a particular contractor will depend on the source from which he is required to obtain such material. Since this is determined solely by the Government it is preferable to agree to adjust the price to the contractor on the basis of the amount paid by him for the allocated material than to include in the price an allowance against this risk. The article contained in § 81.351 (a) may be used for this purpose but only where the Government actually controls and allocates available sources of supply and requires the contractor to procure from the designated source.

(2) Under the system of priorities and allocations applicable to certain materials, a contractor may be obliged to purchase such materials from sources of supply at greater distances from his plant than normal and pay additional freight costs which may represent a serious burden; in such cases the contract may include the article contained in § 81.351 (b) if the contractor eliminates from his price any allowance for such additional expenses.

(3) The articles authorized in this section will generally be used only where the costs of the materials or freight will constitute an appreciable element in the total cost and inclusion of the article will eliminate the need for substantial allowances in the price. If this is not the case, the benefit from their use will be too slight to justify the time and effort involved in their operation.

§ 81.1233 *Interruption of production schedules by Government action.* Government allocations, priorities, and other actions may prevent a contractor from maintaining a constant schedule of production and thereby increase his costs of operation substantially, especially in mass production industries. To avoid the inclusion in price of an allowance against such interruptions, a contract article providing for equitable adjustment in the contract price and the time for performance under such circumstances is contained in § 81.351 (c). Whenever an interruption in the production schedules of a contractor will substantially affect his cost of performance and there is serious risk of such interruption as a result of Government action, this article may be included in the contract if the contractor has eliminated from his price any allowances and reserves for such contingencies.

§ 81.1234 Operation of articles—(a) Upon request by contractor. When the contractor requests equitable adjustment in the price in accordance with a contract article therefor, the following principles will be observed:

(1) The contracting officer will determine from information supplied by the contractor and, if necessary, by inspection of its books and records (i) whether the contingency covered by the article has occurred; and (ii) the amount, if any, by which the costs of the contractor have been increased by the change or contingency.

(2) The adjustment in price should be sufficient to compensate the contractor for the net amount by which his costs have been increased by the change or contingency. Care must be taken to eliminate increases due to other factors, and to allow for any offsetting reductions in costs which have also resulted from the change or contingency.

(3) The contracting officer will promptly notify the contractor in writing of the amount of the adjustment which he has determined to be equitable.

(b) *On initiative of contracting officer.* Certain of these articles provide for equitable adjustment of the contract price downward when specified contingencies reduce the costs. When the contract contains such a provision, the following principles will be observed:

(1) The contracting officer should determine before final payment under the contract (i) whether the specified contingency has occurred and the costs of the contractor have thereby been reduced; and (ii) if so, the amount by which the contract price should be adjusted under the contract article.

(2) In making this determination, care must be taken to eliminate reductions in costs resulting from other factors such as the efficiency of the contractor, and to take into account any offsetting increases in cost which may also have resulted from the same change or contingency.

(3) The contracting officer will promptly notify the contractor of any such downward adjustment in the contract price.

§ 81.1235 Article for short term pricing—(a) Purpose of article. Orderly scheduling of materials, production, subcontracting and deliveries often makes long term contracts necessary or desirable. Cost data and experience may be sufficient for fixing a fair price for part of the performance, but uncertainty of future conditions may prevent this for the remainder of the contract. Thus the contractor may be able to predict conditions for a reasonable period in advance sufficiently to agree to a close price for that period, but may fear that changes in conditions will seriously affect his costs after that time and seek contingency allowances to protect himself. The article for negotiated price revision set out in § 81.361 (a) is designed to meet this situation and is authorized for use in accordance with this regulation.

(b) *Nature of article.* Under this article (§ 81.361 (a)) the original price is

fixed for a specified period and thereafter price is revised upward or downward by negotiation but the revised price applies only to the remainder of the contract and not to deliveries made during the specified period. While this article is similar to § 81.341 (b), they differ basically in purpose. Section 81.341 (b) covers cases where lack of experience and data prevent the fixing of a fair price when the contract is made and allows adjustment of the entire price for past as well as future deliveries. Section 81.361 (a) assumes that the original price can be fairly fixed, but that future conditions cannot be adequately predicted. This article is similar to Form I in § 81.360 of the contract article for periodic adjustment of price, except that it does not provide for exemption from statutory renegotiation and provides for only one revision in the price and not for periodic adjustment.

(c) *Use and operation of article.* In using this article (§ 81.361 (a)) the following principles will be observed:

(1) The contracting officer should satisfy himself that the contractor can supply reliable data on which to base the price revision at the end of the specified period.

(2) The time fixed in the contract for negotiation to revise the price will depend on the circumstances in each case. The original price should be kept in effect for as long a period as conditions will permit without undue contingency allowances and revision provided for thereafter.

(3) In return for the use of this article, the contractor will be required to eliminate from his original price substantially all allowances for future contingencies.

(4) The negotiations to revise the price should be carried on promptly after the time specified in the contract. The contracting officer should obtain sufficient information from the contractor and other sources to permit the new price to be well negotiated. If necessary, he may examine the books and records of the contractor for this purpose. Negotiations should be conducted upon much the same principles as the original negotiation and in accordance with § 81.1224 (b) (5).

(5) The revised price will be evidenced by supplemental agreement specifically providing that the revised price applies only to performance after the original period.

§ 81.1236 Periodic adjustment of price without provision for exemption from renegotiation—(a) Articles authorized. Sections 81.1240-81.1247 authorize the use of two articles in § 81.360 providing for periodic adjustment of the contract price and for exemption of the contract price from statutory renegotiation under certain conditions. Where a supply service desires to provide in a contract for such periodic adjustment of the contract price at regular intervals but does not desire to provide for exemption or for the power to exempt the contract price from statutory renegotiation in accordance with §§ 81.1240-81.1247, either Form I or Form II of § 81.360 may be revised to

eliminate exemption of the contract price from statutory renegotiation or the power of the contracting officer to exempt it therefrom. Form I of § 81.360 will be so modified by deleting the second and third sentences of subsection (b) (2) and the second sentence of subsection (d) (3). Form II of § 81.360 may be so modified by deleting the second sentence of subsection (d) (3). With these deletions Form I or Form II of § 81.360 may be used in the discretion of the chief of a supply service without special permission from the Director, Purchases Division, Headquarters, Army Service Forces.

(b) *Use and operation of articles.* In using § 81.360 modified in accordance with paragraph (a) of this section, the following principles will be observed:

(1) The contracting officer should satisfy himself that the contractor can supply reliable data on which to base the price adjustment at the end of each period.

(2) The contract will include the standard form of contract article for statutory renegotiation (§ 81.342 (a)), if required by § 81.1208.

(3) The contract price will be adjusted for each period in the manner described in §§ 81.1240-81.1247 of this regulation, except that no exemption from renegotiation will be granted and the price will remain subject to statutory renegotiation unless otherwise exempt from section 403, as amended.

CONTRACT ARTICLES FOR PERIODIC READJUSTMENT OF PRICE AND EXEMPTION FROM RENEGOTIATION

§ 81.1240 Articles authorized. Alternative contract articles providing for periodic readjustment of the contract price, and for exemption from statutory renegotiation under the Act of April 28, 1942, (sec. 403, Public Law 528—77th Cong.) as amended, under certain conditions, are set forth in § 81.260 (Form I) and (Form II). These articles, which are called Form I and Form II in this Regulation are approved for use in lump sum or fixed price contracts in accordance with §§ 81.1240-81.1247. Except as expressly authorized in §§ 81.1240-81.1247 or subsequent instructions, deviations from the standard articles will not be used.

§ 81.1241 Effect of articles. Both Form I and Form II divide performance under the contract into specified periods for the purpose of adjusting the contract price. Under Form I the original contract price is exempt from statutory renegotiation for the first period of performance, but under Form II the price for the first period will be adjusted at the end of that period and appropriate credit or refund made, and this adjusted price may be exempted from statutory renegotiation by the contracting officer, as hereafter described. Under both forms the contracting officer and contractor will negotiate at the end of each period on the basis of cost experience and other data, and the contracting officer, at his discretion, may exempt the price so fixed from statutory renegotiation, if he believes that the cost data are sufficiently accurate and that the

price is fair to the Government and will not result in excessive profits to the contractor.

§ 81.1242 Purpose of articles. These articles are intended to carry out the policy of the War Department to promote efficiency in operation and production, reductions in costs by its contractors, and lower prices to the Government. They are designed to obtain these results as follows:

(a) Since the periods for which prices are fixed are to be relatively short, uncertainty and the risks of future changes in conditions are reduced, and the need for reserves and allowances for contingencies should be correspondingly decreased. At the end of each period, the prices for the next period will be fixed on the basis of recent past experience, current conditions, and more accurate forecasts.

(b) If a firm exempt from statutory renegotiation during the specified period is granted, the contractor is expected to agree in return to a close price with a narrow profit margin and to rely on his managerial skill to increase his profit by improved methods and efficiency.

(c) If costs are reduced in one period through efficiency, then when the prices are adjusted for the succeeding period, the Government and the contractor will share the benefit of the reduced costs in the form of lower prices but with a higher allowed profit margin.

§ 81.1243 Use of articles. In using these articles the following principles will be observed:

(a) Since the operation of these articles requires reliable and accurate data on the actual costs of performance, they will be used only when the contracting officer is convinced that the contractor can and will supply reliable cost information in accordance with the contract provisions. Before using these articles in any contract, the contracting officer will therefore examine and analyze the cost accounting system of the contractor and satisfy himself that it is accurate and adequate for these purposes.

(b) These articles also assume that the costs of performance during a succeeding period can be predicted with reasonable accuracy; otherwise there is no sound basis for predicting the probable profits with assurance, or for exempting them from statutory renegotiation. Accordingly, it will not ordinarily be feasible to use these articles unless the contractor has had previous experience in producing substantially similar articles, or the costs are reasonably standardized or can be accurately determined after a short period of performance.

(c) Form I, which provides for a firm price exempt from statutory renegotiation for the first period of performance, will be used only where accurate data are available at the time the contract is made, on the cost of producing substantially the same articles under substantially the same conditions. In general, it will be used only for repeat orders for materials or equipment previously produced by the same contractor.

(d) Form II, under which the contract price for the first period is readjusted

at the end of the period, will be used when the available data on costs of performance are insufficient to allow Form I to be used, but where reasonably accurate costs data will become available toward the end of the first period of performance.

(e) Use of these articles will be limited to contractors who are willing substantially to eliminate allowances in the price for contingencies in view of the short-term pricing and to accept a smaller original profit margin in return for the other benefits of the contract.

(f) The length of the periods of performance to be specified for adjusting the price will depend upon the circumstances of each case. When Form II is used, the first period should be sufficient to allow costs of production to become reasonably stable. The succeeding periods under Form II and all periods under Form I should range from three or four months in most cases up to a maximum of six months where conditions are unusually stable and costs are accurately predictable. Where it will be simpler or more convenient to do so, the contract article may fix the periods by reference to the production or delivery of a prescribed number of articles instead of in terms of days or months, if the length of the periods so fixed will substantially conform to the required duration.

(g) When either Form I or Form II is used, the contract will not include any other provisions for price adjustment (such as escalation, redetermination, upward renegotiation) except (1) the statutory renegotiation article in accordance with § 81.1224, and (2) provisions for equitable adjustment of the price in case of changes in specifications, deliveries, rates of production, or increased expenses resulting from allocations or other Government action (see § 81.351).

(h) Form I or Form II will be used only with the permission of the Director, Purchases Division, Headquarters, Army Service Forces. Requests for such permission will state (1) the experience of the contractor with similar production, (2) the adequacy of the cost system and cost data of the contractor, (3) the price and profit margin which the contractor will agree to if the article is included, and (4) the reasons for recommending approval of the use of the article in the particular contract.

§ 81.1244 Insertion of statutory renegotiation article. Under both Form I and Form II of the articles for periodic price adjustment, the contract price for any period (except the first period under Form I) will remain subject to statutory renegotiation under the Act of April 28, 1942 (sec. 403, Public Law 528, 77th Cong.), as amended, unless it is exempt under the terms of the statute or is exempted by the contracting officer in the exercise of his discretion under the contract article. Accordingly, any contract which contains an article for periodic adjustment of the contract price will also include the contract article for statutory renegotiation (§ 81.342 (a)), if it is required by the provisions of §§ 81.1207-81.1210 of these regulations, but an additional sentence will be added at the end of section (a) of the statutory

renegotiation article (§ 81.342 (a)) in such cases. When Form I is used this added sentence will read as follows:

Sections (a) and (c) of this Article do not apply to the prices fixed for the first period under this contract and exempt from statutory renegotiation by Article * * * or to the prices fixed for any other periods thereunder which are exempted from statutory renegotiation by the Contracting Officer in the exercise of his discretion under that Article.

When Form II is used this added sentence will read as follows:

Sections (a) and (c) of this Article do not apply to the prices fixed for any period under Article * * * of this contract which are exempted from statutory renegotiation by the Contracting Officer in the exercise of his discretion under that Article.

§ 81.1245 Changes in termination article. When Form I or Form II is used, the contract article entitled "Termination for the Convenience of the Government" (§ 81.324 (a)) will be amended by adding at the end of (d) (3) (A) and of (g) of that article the following additional sentence:

For this purpose the contract price for the uncompleted portion of the contract shall be computed on the basis of (1) the prices agreed upon for the price period in which the notice of termination takes effect, if adjusted prices have been agreed upon for that period, or (2) such estimated prices as the contracting officer deems reasonable under all the circumstances, if adjusted prices have not been agreed upon for that period.

§ 81.1246 Price adjustments under the articles. In the operation of contracts containing Form I or Form II, contracting officers will observe the following principles:

(a) When the contractor submits the cost data, estimates, and proposed prices in accordance with the contract terms, the contracting officer will make such tests or checks of the data submitted, by examining the records of the contractor or otherwise, as he deems necessary to satisfy himself of their accuracy and sufficiency.

(b) Negotiations with the contractor to adjust the price will be begun and completed as expeditiously as possible in order to avoid delay in fixing the adjusted price. If, in the opinion of the contracting officer, the contractor unreasonably prolongs or delays the negotiations or refuses to agree upon a reasonable adjusted price, the contracting officer will promptly report the facts to the chief of the supply service who may then initiate appropriate action to protect the interest of the Government either by termination of the contract, by statutory renegotiation of the contract price for any period not exempt therefrom, by compulsory order, or by other means.

(c) In determining the price for the first period under Form II or for succeeding periods under Form I or Form II, the contracting officer will allow more liberal profit margins where the contractor by skillful management, careful buying, or efficiency has reduced costs, and will demand lower profit margins where per-

formance has been inefficient or below standard.

(d) The contracting officer will exercise his power to exempt from statutory renegotiation the adjusted prices agreed upon for the first period under Form II or for succeeding periods under Form I or Form II, only if he is convinced (1) that the cost data and cost estimates are reliable and provide a sufficient basis for fixing fair adjusted prices for the next period, and (2) that the adjusted prices are fair to the Government and, in his opinion based on the cost data and estimates and other available information, will not result in excessive profits. The contracting officer has full responsibility for granting or withholding the exemption. When he is convinced that the foregoing conditions are met, however, he should ordinarily grant the exemption for the period involved. In making this determination he will consult with the Price Adjustment Section of the supply service.

(e) Whenever the contracting officer grants an exemption under a contract containing either Form I or Form II, he will make a report to the Director, Purchases Division, Headquarters, Army Service Forces, stating the adjusted price agreed upon, and containing copies of the data submitted by the contractor and any other data on which the adjusted price was based.

(f) After the entire contract is completed, the contracting officer will request from the contractor a statement showing the actual costs of performing the entire contract, and the prices paid during each period, and will send a copy of the statement to the Director, Purchases Division, Headquarters, Army Service Forces.

§ 81.1247 Inserting articles in existing contracts. Where it is practicable and to the advantage of the Government to do so, existing contracts may be amended by supplemental agreement to insert either Form I or Form II upon the conditions prescribed by these regulations, and with the permission of the Director, Purchases Division, Headquarters, Army Service Forces.

PRICE ADJUSTMENTS WITHOUT CONTRACT PROVISIONS

§ 81.1250 Scope. (a) As the preceding sections emphasize, war conditions frequently require adjustment of contract terms to prevent unfairness to the contractor or the Government. While the provisions discussed above make the contract terms sufficiently flexible to meet many kinds of changes, they do not cover all contingencies and many contracts do not contain these provisions. Accordingly, contracts must often be amended to adapt them to new or unexpected developments.

(b) Such amendments arise from two main sources: (1) changes in the procurement program arising from changes in war equipment or in the relative needs for various types of equipment or from other causes; (2) unexpected difficulties by the contractor in performing the contract. §§ 81.1250-81.1252 deal with policies and methods governing both classes of amendment.

§ 81.1251 Amendments with consideration—(a) Price adjustment upward. The chief of a supply service may amend contracts to increase or modify the price or other contract terms in order to adjust contracts to new conditions:

(1) Whenever the amendment changes the contract specifications, delivery schedules, conditions of manufacture or similar contract terms.

(2) Whenever the amendment restricts or modifies the right of the contractor to perform the contract as he sees fit or on the basis most advantageous to him. Examples are cases where a contractor, who is not bound to do so by his existing contract, agrees to use particular methods of manufacture, substitute materials, specified or costlier sources of supply or subcontractors, or other specified methods or devices to conform with Government policy. (See, for example, § 81.225 (f) and § 81.222 (a).)

(3) Wherever the amendment modifies the volume or rate of production so as to affect adversely the contractor's costs (See, for example, § 81.227 and § 81.307).

(4) In any other case where the amendment is to the advantage of the Government and is based on legal consideration. The chief of the supply service may make any such amendments in accordance with § 81.306 (c) and following without the approval of higher authority, except as expressly required in those paragraphs.

(b) *Price adjustment downward.* Not all such amendments will require an increase in the price and some will justify a reduction in the price. For example, where the contract is amended to increase production or the rate of production under the contract, the costs of production may be reduced. Inasmuch as many of the fixed expenses have been provided for by the original volume, they should not be charged at all or to the same extent against the increased or accelerated production, and this saving will often more than offset any added costs involved in the increased volume or accelerated rate of production. Accordingly, the effects of any increase, speed-up or other change should be carefully analyzed in each case in order to obtain the proper adjustment.

§ 81.1252 Amendments without consideration—(a) Authority. Under the First War Powers Act, 1941 and Executive Order No. 9001 the War Department has power to amend and modify contracts without consideration whenever such amendments will facilitate the prosecution of the war. (See § 81.204, and Opinion of The Attorney General dated August 29, 1942). The following paragraphs do not delegate to the supply services any authority to make amendments without consideration. Such amendments will be made only in accordance with §§ 81.306 (d), 81.308a, and 81.308b of these regulations or express authority conferred by other provisions of the regulations, such as §§ 81.380 and 81.381.

(b) *General policy.* The general policy is to amend contracts to meet changed conditions whenever such action will facilitate the prosecution of the

war. A liberal policy of granting amendments in appropriate cases will (1) assist in obtaining close prices and reasonable cost estimates without excessive allowances in the price for contingencies against unforeseen risks, and (2) insure maximum cooperation and production by assuring contractors of fair treatment. By this policy it is believed that the costs of War Department procurement as a whole will be materially reduced and that the efficiency of production will be substantially increased. The general principles for carrying out this policy are stated in the following paragraphs.

(c) *Basic principle.* Any amendment without consideration under authority of the First War Powers Act must be based upon a finding that such action will facilitate the prosecution of the war. Precise rules for deciding whether this finding is justified in a particular case cannot be prescribed, for in each instance the determination is a matter of sound judgment on the basis of all of the facts, but certain guides can be given as to the matters which should be considered and the type of circumstances where relief may be appropriate.

(d) *Types of cases.* While it is obviously impossible to predict or classify all of the grounds upon which amendments without consideration may be appropriately made, examples of certain types or classes of cases where such relief may be proper are as follows:

(1) Where a contractor has suffered or is threatened with loss or diminished profit on a particular contract as a result of a mutual mistake or a bona fide mistake by the contractor alone as to existing fact (for example, through a clerical error or reasonable misunderstanding as to specifications), the contract price or terms should generally be corrected in accordance with the provisions of § 81.308b of these regulations.

(2) Where a contractor suffers a loss or a diminished profit on a particular contract as a result of Government action, the character of the Government action will generally determine whether any adjustment will be made and its extent.

(i) Where the governmental action is directed primarily at the contractor and is taken by the Government in its capacity as the other contracting party, the price may be equitably adjusted to compensate the contractor for the effect of the action if fairness so requires. Thus where such action by the representatives of the Government, although not creating any liability on its part, increases the cost of performance, or contributes to difficulty encountered by the contractor, considerations of fairness may make appropriate some equitable adjustment of the price or terms.

(ii) Even when the action is not taken by the Government primarily in its capacity as the other contracting party, fairness may sometimes require an equitable adjustment in the contract price or other terms, depending on the nature of the action, the circumstances and the effect on the contractor.

(3) Where special circumstances of the war or enemy action have materially af-

fected the conditions of performance of a contract, and the contractor in fixing his prices has not provided contingency reserves adequate to meet them, appropriate amendment or equitable adjustment of the contract may be justified.

(4) Where an actual or threatened loss on a war contract, however caused, will impair the productive capacity or efficiency of a contractor whose continued operation as an efficient source of supply is, in the judgment of the War Department, important to the war effort, the contract will generally be equitably adjusted to the extent necessary to avoid such impairment of his operations insofar as they are important to the war effort.

(5) Where substitution of new contract procedures or provisions will eliminate administrative difficulties, reduce Government costs, expedite production or auditing, aid accounting, save time and expense or simplify procurement, the contract may be so modified even though the Government in a particular instance may receive no other substantial advantage from the modification (see for example § 81.324).

The foregoing types of situations are enumerated as a guide to contracting officers in submitting cases for amendment without consideration. The grounds described are not mutually exclusive. In some instances several of them will exist, and action on one may be justified although the conditions on the other are not met, or the combined effect of all the grounds of relief may be such as to lead to action under the statute. Whether relief will be granted in a particular case depends, of course, on its special facts and on whether the granting of relief in that case or in the class of cases will facilitate the prosecution of the war. This enumeration is not exhaustive and other types of circumstances may meet the conditions necessary for such relief.

(e) *Time of amendments.* All applications for contract adjustments under the First War Powers Act should be handled as promptly as possible after the occasion for relief arises. If action is delayed until the contractor has completed performance the relief may be ineffective, if granted, or may be denied as a matter of administrative judgment. As a general rule relief will be granted less readily in the later stages of contracts. Accordingly, whenever a request for such action is made or it appears likely that it will be made, the supply service should immediately make an investigation to obtain the necessary facts and submit the case without delay. Speedy action will often greatly increase the value of the adjustment to the contractor, and the knowledge of contractors that such relief will be granted expeditiously will aid the Government in obtaining closer pricing and achieving the other desired objectives of this policy.

(f) *Preparation of cases.* In view of the special nature of the power to be exercised, the supply service will develop the facts in each case adequately and prepare a report to be submitted with any request for approval by higher au-

thority and preserved in the records of the supply service. In general, the report should contain information of the following types, so far as relevant to the particular case, and any other pertinent facts likely to assist in considering the proposed relief.

(1) Brief description of the contract involved.

(i) Date and length of contract; items, delivery schedules, and prices.

(ii) Special clauses for price adjustments; for partial or advance payments; or other special clauses.

(iii) Government-owned, Emergency Plant, or Defense Plant facilities involved, and methods employed to protect any Government interest in facilities of contractor.

(2) Factors creating need for relief.

(i) Nature of item (standard, new or experimental).

(ii) Previous experience of contractor with similar production.

(iii) Changes in conditions or Government action affecting contractor's costs.

(iv) Cost experience of the contractor under the contract, and relation to original estimates.

(v) Reserves or allowances against such contingencies included in original price.

(3) Extent of relief needed.

(i) Financial position of contractor, with supporting balance sheets and profit and loss statements.

(ii) Estimates of future costs under contract.

(iii) Extent of completion, and amounts paid.

(iv) Other war contracts and business of contractor.

(v) Views of contractor on relief appropriate.

(vi) Effect of granting relief on profits of the contractor, and comparison with prices and contracts of other contractors.

(vii) Effect of refusing relief.

(4) Importance of contract or contractor to the prosecution of the war.

(i) Size of contract and need for item.

(ii) Other available sources of supply in comparison with contractor.

(iii) Quality of performance by contractor (rate of production, delays, rejections).

(iv) Probable future orders to contractor; or other war work.

(5) A statement showing whether or not any claim relating to the case is pending before the General Accounting Office.

(6) Statement by the chief of supply service himself, or by an officer specially designated by him to review requests for relief of this type and to make recommendations thereon in his behalf, stating:

(i) The exact relief recommended.

(ii) That in his opinion the granting of the relief recommended will facilitate the prosecution of the war (see paragraph (c) of this section).

(iii) The scope of the investigation of the circumstances made by the supply service.

(iv) The extent of his own review of the facts.

(v) The name, address, and telephone number of the person in the War De-

partment with detailed knowledge of the facts of the case.

(g) *Approvals by Purchases Division, Headquarters.* All necessary approval by higher authority will be obtained in each instance in accordance with §§ 81.306 (d), 81.308a, and 81.308b and other sections of these regulations.

APPENDIX

§ 81.1290 *Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 (Public 528, 77th Congress), approved April 28, 1942, as amended by the section 801 of the Revenue Act of 1942 (Public 753, 77th Congress) approved October 21, 1942*—(a) *Sec. 403 (a).*

SEC. 403 (a). For the purposes of this section:

(1) The term "Department" means the War Department, the Navy Department, the Treasury Department, and the Maritime Commission, respectively.

(2) In the case of the Maritime Commission, the term "Secretary" means the Chairman of such Commission.

(3) The terms "renegotiate" and "renegotiation" include the refixing by the Secretary of the Department of the contract price.

(4) The term "excessive profits" means any amount of a contract or subcontract price which is found as a result of renegotiation to represent excessive profits.

(4) The term "excessive profits" means any purchase order or agreement to perform all or any part of the work, or to make or furnish any article required for the performance of another contract or subcontract. The term "article" includes any material, part, assembly, machinery, equipment, or other personal property.

For the purposes of subsections (d) and (e) of this section the term "contract" includes a subcontract and the term "contractor" includes a subcontractor.

(b) *Sec. 403 (b).*

SEC. 403 (b). Subject to subsection (1) the Secretary of each Department is authorized and directed to insert in any contract for an amount in excess of \$100,000 hereafter made by such Department:

(1) A provision for the renegotiation of the contract price at a period or periods when, in the judgment of the Secretary, the profits can be determined with reasonable certainty;

(2) A provision for the retention by the United States from amounts otherwise due the contractor, or for the repayment by him to the United States, if paid to him, of any excessive profits not eliminated through reductions in the contract price, or otherwise, as the Secretary may direct;

(3) A provision requiring the contractor to insert in each subcontract for an amount in excess of \$100,000 made by him under such contract (i) a provision for the renegotiation by such Secretary and the subcontractor of the contract price of the subcontract at a period or periods when, in the judgment of the Secretary, the profits can be determined with reasonable certainty, (ii) a provision for the retention by the contractor for the United States of the amount of any reduction in the contract price of any subcontract pursuant to its renegotiation hereunder, or for the repayment by the subcontractor to the United States of any excessive profits from such subcontract paid to him and not eliminated through reductions in the contract price or otherwise, as the Secretary may direct, and (iii) a provision for relieving the contractor from any liability to the subcontractor on account of any amount so retained by the contractor or repaid by the

subcontractor to the United States, and (iv) in the discretion of the Secretary, a provision requiring any subcontractor to insert in any subcontract made by him under such subcontract, provisions corresponding to those of subparagraphs (3) and (4) of this subsection (b); and

(4) A provision for the retention by the United States from amounts otherwise due the contractor, or for repayment by him to the United States as the Secretary may direct, of the amount of any reduction in the contract price of any subcontract under such contract, which the contractor is directed, pursuant to clause (3) of this subsection, to withhold from payments otherwise due the subcontractor and actually unpaid at the time the contractor receives such direction.

The provision for the renegotiation of the contract price, in the discretion of the Secretary, (i) may fix the period or periods when or within which renegotiation shall be had; and (ii) if in the opinion of the Secretary the provisions of the contract or subcontract are otherwise adequate to prevent excessive profits, may provide that renegotiation shall apply only to a portion of the contract or subcontract or shall not apply to performance during a specified period or periods and may also provide that the contract price in effect during any such period or periods shall not be subject to renegotiation.

(c) *Sec. 403 (c).*

SEC. 403. (c) (1) Whenever, in the opinion of the Secretary of a Department, the profits realized or likely to be realized from any contract with such Department, or from any subcontract thereunder whether or not made by the contractor, may be excessive, the Secretary is authorized and directed to require the contractor or subcontractor to renegotiate the contract price. When the contractor or subcontractor holds two or more contracts or subcontracts the Secretary in his discretion, may renegotiate to eliminate excessive profits on some or all of such contracts or subcontracts as a group without separately renegotiating the contract price of each contract or subcontract.

(2) Upon renegotiation, the Secretary is authorized and directed to eliminate any excessive profits under such contract or subcontract (i) by reductions in the contract price of the contract or subcontract or by other revision in its terms; or (ii) by withholding, from amounts otherwise due to the contractor or subcontractor, any amount of such excessive profits; or (iii) by directing a contractor to withhold for the account of the United States, from amounts otherwise due to the subcontractor, any amount of such excessive profits under the subcontract; or (iv) by recovery from the contractor or subcontractor through repayment, credit or suit, of any amount of such excessive profits actually paid to him; or (v) by any combination of these methods, as the Secretary deems desirable. The Secretary may bring actions on behalf of the United States in the appropriate courts of the United States to recover from such contractor or subcontractor, any amount of such excessive profits actually paid to him and not withheld or eliminated by some other method under this subsection. The surety under a contract or subcontract shall not be liable for the repayment of any excessive profits thereon. All money recovered by way of repayment or suit under this subsection shall be covered into the Treasury as miscellaneous receipts.

(3) In determining the excessiveness of profits realized or likely to be realized from any contract or subcontract, the Secretary shall recognize the properly applicable exclusions and deductions of the character which the contractor or subcontractor is allowed under Chapter I and Chapter 2E of the In-

ternal Revenue Code. In determining the amount of any excessive profits to be eliminated hereunder the Secretary shall allow the contractor or subcontractor credit for Federal income and excess profits taxes as provided in section 3806 of the Internal Revenue Code.

(4) Upon renegotiation pursuant to this section, the Secretary may make such final or other agreements with a contractor or subcontractor for the elimination of excessive profits and for the discharge of any liability for excessive profits under this section, as the Secretary deems desirable. Such agreements may cover such past and future period or periods, may apply to such contract or contracts of the contractor or subcontractor, and may contain such terms and conditions, as the Secretary deems advisable. Any such agreement shall be final and conclusive according to its terms; and except upon showing of fraud or malfeasance or a wilful misrepresentation of a material fact, (i) such agreement shall not be reopened as to the matters agreed upon, and shall not be modified by any officer, employee, or agent of the United States; and (ii) such agreement and any determination made in accordance therewith shall not be annulled, modified, set aside, or disregarded in any suit, action, or proceeding.

(5) Any contractor or subcontractor who holds contracts or subcontracts to which the provisions of this section are applicable, may file with the Secretaries of all the Departments concerned statements of actual costs of production and such other financial statements for any prior fiscal year or years of such contractor or subcontractor, in such form and detail, as the Secretaries shall prescribe by joint regulation. Within one year after the filing of such statements, or within such shorter period as may be prescribed by such joint regulation, the Secretary of a Department may give the contractor or subcontractor written notice, in form and manner to be prescribed in such joint regulation, that the Secretary is of the opinion that the profits realized from some or all of such contracts or subcontracts may be excessive, and fixing a date and place for an initial conference to be held within sixty days thereafter. If such notice is not given and renegotiation commenced by the Secretary within such sixty days the contractor or subcontractor shall not thereafter be required to renegotiate to eliminate excessive profits realized from any such contract or subcontract during such fiscal year or years and any liabilities of the contractor or subcontractor for excessive profits realized during such period shall be thereby discharged.

(6) This subsection (c) shall be applicable to all contracts and subcontracts hereafter made and to all contracts and subcontracts heretofore made, whether or not such contracts or subcontracts contain a renegotiation or recapture clause, unless (i) final payment pursuant to such contract or subcontract was made prior to April 28, 1942, or (ii) the contract or subcontract provides otherwise pursuant to subsection (b) or (1) or is exempted under subsection (1), of this section 403, or (iii) the aggregate sales by the contractor or subcontractor, and by all persons under the control of or controlling or under common control with the contractor or subcontractor, under contracts with the Departments and subcontracts thereunder do not exceed, or in the opinion of the Secretary concerned will not exceed \$100,000 for the fiscal year of such contractor or subcontractor.

No renegotiation of the contract price pursuant to any provision therefor, or otherwise, shall be commenced by the Secretary more than one year after the close of the fiscal year of the contractor or subcontractor within which completion or termination of the contract or subcontract, as determined by the Secretary, occurs.

(d) *Sec. 403 (d).*

Sec. 403 (d). In renegotiating a contract price or determining excessive profits for the purposes of this section, the Secretaries of the respective Departments shall not make any allowance for any salaries, bonuses, or other compensation paid by a contractor to its officers or employees in excess of a reasonable amount nor shall they make allowance for any excessive reserves set up by the contractor or for any cost incurred by the contractor which are excessive and unreasonable. For the purpose of ascertaining whether such unreasonable compensation has been or is being paid, or whether such excessive reserves have been or are being set up, or whether any excessive and unreasonable costs have been or are being incurred, each such Secretary shall have the same powers with respect to any such contractor that an agency designated by the President to exercise the powers conferred by title XIII of the Second War Powers Act, 1942, has with respect to any contractor to whom such title is applicable. In the interest of economy and the avoidance of duplication of inspection and audit, the services of the Bureau of Internal Revenue shall, upon request of each such Secretary and the approval of the Secretary of the Treasury be, made available to the extent determined by the Secretary of the Treasury for the purposes of making examinations and determinations with respect to profits under this section.

(e) *Sec. 403 (e).*

Sec. 403 (e). In addition to the powers conferred by existing law, the Secretary of each Department shall have the right to demand of any contractor who holds contracts with respect to which the provisions of this section are applicable in an aggregate amount in excess of \$100,000, statements of actual costs of production and such other financial statements, at such times and in such form and detail, as such Secretary may require. Any person who willfully fails or refuses to furnish any statement required of him under this subsection, or who knowingly furnishes any such statement containing information which is false or misleading in any material respect, shall, upon conviction thereof, be punished by a fine of not more than \$10,000 or imprisonment for not more than two years, or both. The powers conferred by this subsection shall be exercised in the case of any contractor by the Secretary of the Department holding the largest amount of such contracts with such contractor, or by such Secretary as may be mutually agreed to by the Secretaries concerned.

(f) *Sec. 403 (f).*

Sec. 403 (f). Subject to any regulations which the President may prescribe for the protection of the interest of the Government, the authority and discretion herein conferred upon the Secretary of each Department may be delegated in whole or in part by him to such individuals or agencies as he may designate in his Department, or in any other Department with the consent of the Secretary of that Department, and he may authorize such individuals or agencies to make further delegations of such authority and discretion.

(g) *Sec. 403 (g).*

Sec. 403 (g). If any provision of this section or the application thereof to any person or circumstance is held invalid, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected thereby.

(h) *Sec. 403 (h).*

Sec. 403 (h). This section shall remain in force during the continuance of the present

war and for three years after the termination of the war, but no court proceedings brought under this section shall abate by reason of the termination of the provisions of this section.

(i) *Sec. 403 (i).*

Sec. 403 (i). (1) The provisions of this section shall not apply to—

(i) Any contract by a Department with any other department, bureau, agency, or governmental corporation of the United States or with any Territory, possession, or State or any agency thereof or with any foreign government or any agency thereof; or

(ii) Any contract or subcontract for the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, which has not been processed, refined, or treated beyond the first form or state suitable for industrial use; and the Secretaries are authorized by joint regulation, to define, interpret, and apply this exemption.

(2) The Secretary of a Department is authorized, in his discretion, to exempt from some or all of the provisions of this section—

(i) Any contract or subcontract to be performed outside of the territorial limits of the continental United States or in Alaska;

(ii) Any contracts or subcontracts under which, in the opinion of the Secretary, the profits can be determined with reasonable certainty when the contract price is established, such as certain classes of agreements for personal services, for the purchase of real property, perishable goods, or commodities the minimum price for the sale of which has been fixed by a public regulatory body, of leases and license agreements, and of agreements, where the period of performance under such contract or subcontract will not be in excess of thirty days; and

(iii) A portion of any contract or subcontract or performance thereunder during a specified period or periods, if in the opinion of the Secretary, the provisions of the contract are otherwise adequate to prevent excessive profits.

The Secretary may so exempt contracts and subcontracts both individually and by general classes or types.

Subsection (d) of section 801 of the Revenue Act of 1942 provides:

The amendments made by this section shall be effective as of April 28, 1942 [the date of enactment of the Sixth Supplemental National Defense Appropriation Act, 1942].

(j) *Sec. 3806 of I. R. C.* The text of section 3806 of the Internal Revenue Code as added by section 508 of the Revenue Act of 1942 is as follows:

SEC. 3806. Mitigation of effect of renegotiation of war contracts or disallowance of reimbursement—(a) Reduction for prior taxable year.—(1) *Excessive profits eliminated for prior taxable year.* In the case of a contract with the United States or any agency thereof, or any subcontract thereunder, which is made by the taxpayer, if a renegotiation is made in respect of such contract or subcontract and an amount of excessive profits received or accrued under such contract or subcontract for a taxable year (hereinafter referred to as "prior taxable year") is eliminated and, in a taxable year ending after December 31, 1941, the taxpayer is required to pay or repay to the United States or any agency thereof the amount of excessive profits eliminated or the amount of excessive profits eliminated is applied as an offset against other amounts due the taxpayer, the part of the contract or subcontract price which was received or was accrued for the prior taxable year shall be reduced by the amount of excessive profits eliminated. For the purposes of this section—

(A) The term "renegotiation" includes any transaction which is a renegotiation within

the meaning of section 403 of the Sixth Supplemental National Defense Appropriation Act (Pub. 528, 77th Cong., 2d Sess.) or such section, as amended, any modification of one or more contracts with the United States or any agency thereof, and any agreement with the United States or any agency thereof in respect of one or more such contracts or subcontracts thereunder.

(B) The term "excessive profits" includes any amount which constitutes excessive profits within the meaning assigned to such term by subsection (a) of section 403 of the Sixth Supplemental National Defense Appropriation Act (Public 528, 77th Cong., 2d Sess.), as amended by the Revenue Act of 1942, any part of the contract price of a contract with the United States or any agency thereof, any part of the subcontract price of a subcontract under such a contract, and any profits derived from one or more such contracts or subcontracts.

(C) The term "subcontract" includes any purchase order or agreement which is a subcontract within the meaning assigned to such term by subsection (a) of section 403 of the Sixth Supplemental National Defense Appropriation Act (Public 528, 77th Cong., 2d Sess.), as amended by the Revenue Act of 1942.

(2) *Reduction of reimbursement for prior taxable year.* In the case of a cost-plus-a-fixed-fee contract between the United States or any agency thereof and the taxpayer, if an item for which the taxpayer has been reimbursed is disallowed as an item of cost chargeable to such contract and, in a taxable year beginning after December 31, 1941, the taxpayer is required to repay the United States or any agency thereof the amount disallowed or the amount disallowed is applied as an offset against other amounts due the taxpayer, the amount of the reimbursement of the taxpayer under the contract for the taxable year in which the reimbursement for such item was received or was accrued (hereinafter referred to as "prior taxable year") shall be reduced by the amount disallowed.

(3) *Deduction disallowed.* The amount of the payment, repayment, or offset described in paragraph (1) or paragraph (2) shall not constitute a deduction for the year in which paid or incurred.

(4) *Exception.* The foregoing provisions of this subsection shall not apply in respect of any contract if the taxpayer shows to the satisfaction of the Commissioner that a different method of accounting for the amount of the payment, repayment, or disallowance clearly reflects income, and in such case the payment, repayment, or disallowance shall be accounted for with respect to the taxable year provided for under such method, which for the purposes of subsections (b) and (c) shall be considered a prior taxable year.

(b) *Credit against repayment on account of renegotiation or allowance.* (1) *General rule.* There shall be credited against the amount of excessive profits eliminated the amount by which the tax for the prior taxable year under Chapter 1, Chapter 2A, Chapter 2D, and Chapter 2E, is decreased by reason of the application of paragraph (1) of subsection (a); and there shall be credited against the amount disallowed the amount by which the tax for the prior taxable year under Chapter 1, Chapter 2A, Chapter 2D, and Chapter 2E, is decreased by reason of the application of paragraph (2) of subsection (a).

(2) *Credit for barred year.* If at the time of the payment, repayment, or offset described in paragraph (1) or paragraph (2) of subsection (a), refund or credit of tax under Chapter 1, Chapter 2A, Chapter 2D, or Chapter 2E, for the prior taxable year, is prevented (except for the provisions of section 3801) by any provision of the internal-revenue laws other than section 3761, or by rule of law,

the amount by which the tax for such year under such chapters is decreased by the application of paragraph (1) or paragraph (2) of subsection (a) shall be computed under this paragraph. There shall first be ascertained the tax previously determined for the prior taxable year. The amount of the tax previously determined shall be (A) the tax shown by the taxpayer upon his return for such taxable year, increased by the amounts previously assessed (or collected without assessment) as deficiencies, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or (B) if no amount was shown as the tax by such taxpayer upon his return, or if no return was made by such taxpayer, then the amounts previously assessed (or collected without assessment) as deficiencies, but such amounts previously assessed, or collected without assessment, shall be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax. There shall then be ascertained the decrease in tax previously determined which results solely from the application of paragraph (1) or paragraph (2) of subsection (a) to the prior taxable year. The amount so ascertained, together with any amounts collected as additions to the tax or interest, as a result of paragraph (1) or paragraph (2) of subsection (a) not having been applied to the prior taxable year shall be the amount by which such tax is decreased.

(3) *Interest.* In determining the amount of the credit under this subsection no interest shall be allowed with respect to the amount ascertained under paragraph (1) or paragraph (2); except that if interest is charged by the United States or the agency thereof on account of the disallowance for any period before the date of the payment, repayment, or offset, the credit shall be increased by an amount equal to interest on the amount ascertained under either such paragraph at the same rate and for the period (prior to the date of the payment, repayment, or offset) as interest is so charged.

(c) *Credit in lieu of other credit or refund.* If a credit is allowed under subsection (b) with respect to a prior taxable year no other credit or refund under the internal revenue laws founded on the application of subsection (a) shall be made on account of the amount allowed with respect to such taxable year. If the amount allowable as a credit under subsection (b) exceeds the amount allowed under such subsection, the excess shall, for the purposes of the internal revenue laws relating to credit or refund of tax, be treated as an overpayment for the prior taxable year which was made at the time payment, repayment, or offset was made.

§ 81.1291 Joint regulation.

Joint regulation interpreting and applying subsection (i) (1) (ii) of section 403, the Sixth Supplemental National Defense Appropriation Act, 1942, as amended by section 801 of the Revenue Act of 1942.

1. The term "exempted product", as used in this regulation, shall mean any of the following products:

Aggregates consisting of washed or screened sand, gravel or crushed stone.

Aluminum ingots and pigs; alumina; calcined or dried bauxite; crude bauxite.

Antimony ore, crude; antimony ore, concentrated; antimony metal; antimony oxide.

Arsenic powder; arsenic oxide (white arsenic).

Asbestos fibre.

Bismuth.

Cement.

Chromium ore and ferrochrome not processed beyond the form or state suitable for use as an alloy or refractory in the manufacture of steel; bichromates; chromic acid.

China clay; kaolin clay; fire clay; brick and tile made from clays other than kaolin, china or fire clay.

Coal, prepared; run of mine coal.

Copper ore, crude; copper ore, concentrated; copper billets, cathodes, cakes, ingots, ingot bars, powder slabs and wirebars.

Fluorspar ore; fluorspar fluxing gravel; lump ceramic ground fluorspar; acid grades of fluorspar.

Crude iron ore; pig iron.

Gas, natural, not processed or treated further than the processing or treating customarily occurring at or near the well.

Gypsum, crude; calcined gypsum.

Lead ore; refined lead bars, ingots and pigs; antimonial lead bars, ingots and pigs.

Lime.

Magnesite; dead burned magnesite.

Metallic magnesium pigs and ingots.

Manganese ore; ferromanganese; silicomanganese.

Oil, crude, not processed or treated further than the processing or treating customarily occurring at or near the well.

Phosphate rock; superphosphate.

Ferromolybdenum; calcium molybdate; molybdenum oxide.

Rock salt; common salt of all grades.

Refined silver bars, shot, powder and grains.

Stone, rough dimension.

Sulphur, crude.

Refined pig tin.

Standing timber, logs sawed into lengths, and logs with or without bark.

Tungsten ore and concentrates; ferrotungsten; tungsten powder.

Vanadium ore and concentrates; ferrovanadium; vanadium pentoxide.

Zinc anodes, balls, oxides, powder and slabs.

2. Subsection (1) (1) (ii) of section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, is interpreted to mean that each of the exempted products is "the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, which has not been processed, refined or treated beyond the first form or state suitable for industrial use". The provisions of said section 403, as amended, shall not apply to contracts or subcontracts for the exempted products.

3. In cases where a contractor or subcontractor (a) processes, refines or treats a product to bring it up to the form or state of an exempted product and, (b) further refines, processes or treats such exempted product beyond the first form or state suitable for industrial use in order to perform his contract or subcontract, then in such cases the exempted product in its first form or state suitable for industrial use shall be considered, for the purposes of renegotiation, under Section 403, as amended, as an item of cost at its established sale or market price.

4. This regulation may be amended from time to time, revising the list of exempted products contained in paragraph 1 of this regulation.

FEBRUARY 1, 1943.

ROBERT P. PATTERSON,
Under Secretary of War.

JAMES FORRESTAL,
Under Secretary of the Navy.
CLIFTON E. MACK,
Director of Procurement,
Treasury Department.

EMORY S. LAND,
Chairman, Maritime Commission.

FORMS OF CONTRACTS

Article X of § 81.1303 is amended as follows:

§ 81.1303 W. D. Contract Form No. 3

ART. X. Labor. * * *

5. Insert [¶ 325] (§ 81.325)

6. Insert [¶ 344] (§ 81.344)

Section 81.1315 is added as follows:

§ 81.1315 W. D. Contract Form No. 15.

Contract No. -----

WAR DEPARTMENT

NEGOTIATED ELECTRIC SERVICE CONTRACT

Contractor & address:

Place:

Connection charge:

Estimated annual refund:

Payment:

To be made by -----, U. S. Army, at -----

The equipment, supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following allotments, the available balances of which are sufficient to cover the cost of same:

This contract was negotiated under and is authorized by the following laws:

NEGOTIATED ELECTRIC SERVICE CONTRACT

This contract, entered into this ---- day of -----, 19----, by and between The United States of America (hereinafter called the "Government"), represented by the Contracting Officer executing this contract, and -----

a Corporation organized and existing under the laws of the State of ----- with principal office at ----- (hereinafter called the "Contractor"), witnesseth that:

Whereas, the Contractor is a public utility engaged in the business of supplying electric service to private and public consumers in the State of -----; and Whereas, the Government and the Contractor are entering into this contract for the supplying by the Contractor to the Government of electric service for the operation of ----- known as ----- (hereinafter called the "Project"); and

Whereas, in order that the Contractor may supply electric service in accordance with the terms of this contract and within the time specified, it is necessary for the Contractor to provide the facilities described and enumerated in Appendix "A" attached hereto, and generally referred to hereinafter as Contractor's New Facilities; and

Whereas, due to the present uncertainty as to the amount of electric service which Government will use, and as to the length of time the Project will be operated, the Government is willing to compensate Contractor in the form of a connection charge for the cost of the facilities required to furnish services;

Now, therefore, in consideration of the premises and of the mutual agreements herein contained, to be performed by the parties hereto respectively, it is agreed as follows:

ARTICLE I. Facilities to be provided.

1. The Contractor shall proceed to acquire or construct all necessary equipment, materials and rights of way needed for Contractor's New Facilities, which are described more fully in Appendix "A" attached hereto and made a part hereof. It is estimated that such facilities will be completed ----- from the date of approval of this contract. It is expressly understood however that neither the Contractor nor the Government guarantees the correctness of this estimate but will use its best effort to acquire or construct the facilities within the time specified.

2. The Government hereby grants to the Contractor a license to enter upon and use a site or sites to be agreed upon between the parties hereto upon which the Contractor

shall install, operate and maintain the Contractor's New Facilities to be located on Government property; and such license shall continue in effect until such time as the Government shall order the removal of Contractor's New Facilities located thereon: Provided, That after Contractor's New Facilities are ordered removed Contractor shall have ninety (90) days within which to comply with the Government order and if such facilities are not removed within said ninety (90) day period, title thereto shall vest in the Government without further action brought, and no claim for damages against the Government or its officers or agents shall be created by or made on account thereof: And provided further, That if the Government orders removal to another location on the project, for the convenience of the Government, then the Government shall pay the cost of such removal and relocation and shall likewise license Contractor to use such land as may be necessary for the relocation. The license hereby granted by the Government to the Contractor shall be free of any rental or other charges.

3. The names of the employees of the Contractor whose services Contractor proposed to retain in the construction, operation and maintenance of that portion of Contractor's New Facilities located within the boundaries of the Project shall be submitted to the Commanding Officer, or his authorized representative, in advance of actual employment for such purposes, together with pertinent information within the knowledge of Contractor as to the character, background and international political sympathies or affiliations of such employees, and the Commanding Officer, or his representative, shall reject or approve of the employment of such persons within the confines of the Project as he may deem proper in the interests of the United States. Only those employees who have been approved as hereinbefore provided shall receive employment within the confines of the Project and those so approved shall be designated as such by a method to be agreed upon by the Contractor and the Commanding Officer of the Project.

ART. II. Payment for cost of facilities. 1. In consideration of the investment to be made by the Contractor and the uncertain duration of the operation of the Project the Government agrees to pay the Contractor, as a connection charge, the estimated cost, less estimated salvage value of the facilities to be provided by the Contractor under this contract within thirty (30) days after receipt of satisfactory evidence of completion of the facilities. It is estimated that the facilities to be constructed under this contract will cost \$----- The agreed net salvage value to be deducted is \$----- The net connection charge to be paid by the Government shall be \$----- The Government is to receive a refund of the amount so paid as hereinafter provided.

ART. III. Ownership, operation, maintenance, and removal of facilities to be provided hereunder. 1. The facilities to be supplied by the Contractor as hereinbefore provided for, notwithstanding the reimbursement by the Government of the estimated cost thereof less net salvage value, shall be and remain the sole property of the Contractor and shall, at all times during the life of this contract or any renewals thereof, be operated and maintained by the Contractor at its expense, and all taxes and other charges in connection therewith, together with all liability arising out of the construction, operation, or maintenance of said facilities shall be assumed by the Contractor.

2. Upon termination of the service provisions of this contract, Contractor may, of its own volition, remove any of its new facilities constructed under and by virtue of this con-

tract: *Provided, however.* That at any time within fifteen (15) months from the date of termination such facilities so removed will be reinstalled by Contractor without cost to the Government, upon receipt of sixty (60) days written notice from the Government: *And provided* A new service contract is executed between the parties hereto. This provision shall not give the Government the right to have such facilities reinstalled without cost to the Government in the event the Government "orders" removal as provided under Article I, section 2.

ART. IV. *Refund agreement.* 1. In consideration of the fact that the Contractor is to be reimbursed for the estimated cost of the facilities to be provided hereunder less the estimated net salvage value thereof, and the further consideration that title to said facilities is to be and remain in the Contractor, it agrees to allow the Government on each monthly bill for electric service supplied as hereinafter provided for, a credit of ten percent (10%) of the gross amount of such bills as rendered, said credits to be made monthly and continue until such time as the accumulated credits equal the amount of the connection charge, unless this contract shall have been previously terminated, except that if a new contract for the supply of electric service shall be entered into between the parties hereto within a period of fifteen months from the date of such failure to renew, the deductions shall resume and continue as above provided.

2. Anything in this contract to the contrary notwithstanding, no refund shall be made the Government or credit allowed on Government bills, after fifteen (15) years from the date of this contract.

ART. V. *Option to reduce minimum charges.* 1. In the event of a partial or total shutdown or abandonment of the Project, and, as a result thereof, power consumption is curtailed to less than twenty five percent (25%) of the average consumption for the ninety (90) day period immediately preceding such curtailment then the Government shall have the option to give the Contractor ninety (90) days notice after which time the minimum charge indicated in the rate schedule shall not apply, and the minimum to be charged shall be in accordance with the rate for the class of service required.

ART. VI. *Term of contract.* 1. This contract shall take effect as of the date of execution thereof and continue until further notice. Notice of intention to terminate this contract shall be at the option of the Government and shall be given in writing by the Contracting Officer to the Contractor not less than ninety (90) days in advance of the effective date of termination.

ART. VII. *Service.* 1. Contractor shall supply the electric service required by the Government for use at the Project. The Government agrees that the electric service to be supplied under the terms of this contract shall be used only in connection with activities within the boundaries of the Project as presently located or as such boundaries may be extended in the future.

ART. VIII. *Description of electric current delivered.*

Volts _____ Cycles _____ Phase _____
Number of wires { 2 } direct or alternating
{ 4 } current.

ART. IX. *Metering and accounts.* 1. The Contractor shall furnish, install, maintain, calibrate, and read the meters used to measure the electrical energy supplied by the Contractor for which payment is to be made, and shall render monthly accounts to the Contracting Officer, the meter reading to be made

in the presence of the Contracting Officer or his authorized representative. These accounts, which shall remain the property of the Government, shall contain the statements of the readings of the meters at the beginning of the month, meter constants, monthly consumption, with respective charges and allowances, if any, in detail.

ART. X. *Description of meters.* 1. All electrical energy supplied by the Contractor under the terms of this agreement shall be measured by means of the following metering equipment:

(1) When purchased on primary meter measurement—

Primary watt-hour meter, _____ amperes,

_____ volts, _____ cycles,

_____ phases, _____ wires.

Located at _____

Other meters _____

(2) When purchased on secondary meter measurement—

Secondary watt-hour meter, _____ amperes,

_____ volts, _____ cycles,

_____ phases, _____ wires.

Located at _____

(3) When purchased with demand meter measurement—

Maximum demand indicator arrangements to record or indicate the average maximum demand over a period of _____

minutes, and the average billing maximum demand shall be the average of _____

such readings per month. The instrument used for this purpose shall be of the following type and description: _____

ART. XI. *Billing.* 1. Bills shall be rendered on the basis of _____ meters installed, the readings of each separate meter to be—

¹(1) Billed separately.

¹(2) All added and billed as one quantity.

ART. XII. *Service regulations.* 1. The matter of meters, meter accuracy, reliability of service, voltage regulation, and frequency variations, and all other matters not stipulated in this contract, shall be governed by the rules applicable and on file with the State Commission having jurisdiction in said matters, or where not on file with the State Commission, then such matters shall be governed by applicable rules or codes of the United States Bureau of Standards.²

ART. XIII. *Change in load.* 1. Reasonable notice will be given by each party to the other as to any material changes proposed in the connected load in the Project or on the lines serving the Project.

ART. XIV. *Change of schedule.* 1. The Contractor hereby agrees that if, after furnishing electrical energy for any ninety (90) day period during the life of this contract, it would have been more advantageous to the Government to have taken service under any other of the Contractor's standard rate schedules in effect during any such period for like conditions of service to the class of service furnished hereunder, the rate shall be changed to conform to the schedule and an adjustment of the charges for the last of such periods shall be made, based on such schedule.

ART. XV. *Change of rates.* 1. If during the life of this contract the State Commission having jurisdiction receives for file in authorized manner rates that are higher or rates that are lower than those stipulated herein for like conditions of service, the Contractor hereby agrees to continue to furnish electric current as stipulated in this contract,

¹ Delete irrelevant statement.

² Delete irrelevant words in cases where State Commission has no jurisdiction.

and the Government hereby agrees to pay for such electric current at the higher or lower rates from and after the date when such rates are made effective.

ART. XVI. *Deductions.* 1. This contract contemplates that continuous service shall be furnished. Should the power company desire to interrupt service for maintenance or repair purposes, arrangement therefor shall be made with the proper officials in order that such interruptions will least interfere with service for the Government.

2. If such arrangement is not made, and if the interruption is due to conditions within the control of the Contractor, deductions shall be imposed which will partially compensate the Government. For a shut-down lasting from three minutes to thirty minutes, 10 percent of the cost of current for the preceding day of similar service shall be deducted. For a shut-down of over thirty minutes, 25 percent of the cost of current for the preceding day of similar service shall be deducted.

ART. XVII. *Payments.* 1. For and in consideration of the faithful performance of the stipulations of this contract, the Contractor shall be paid by the designated disbursing officer for electrical energy herein contracted for, at the rates and under the terms and conditions hereinafter set forth; and the Contractor hereby declares that said rates are not in excess of the lowest rates now available to any prospective customer under like conditions of service.

2. All bills for electric energy delivered shall be paid without penalty or interest within fifteen (15) days from the date the bill is rendered, but this provision shall not operate to preclude the Government from the benefits of any discounts that might be available through more prompt payment.

ART. XVIII. *Ownership of premises.* 1. The premises to be served under this contract are:

A. Government owned.

B. Government leased.

2. a. The symbol number of the Government lease is _____

b. The name of the lessor is _____

ART. XIX. *Rates.*

ART. XX. *General provisions.*

1. Convict Labor [Insert (§ 345) (§ 81.345)]

2. Eight-Hour Law (Insert (§ 346) (§ 81.346))

3. Officials Not To Benefit (Insert (§ 322) (§ 81.322))

4. Disputes (Insert (§ 326)) (§ 81.326)

5. Covenant Against Contingent Fees (Insert (§ 323)) (§ 81.323)

6. Anti-Discrimination (Insert (§ 325) (§ 81.325))

7. Assignment of Rights Hereunder (Insert (§ 355)) (§ 81.355)

8. Renegotiation Pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended (Insert (§ 342.1)) (§ 81.342 (a))

ART. XXI. *Definitions.* (Insert (§ 301.22) (§ 81.1301v))

ART. XXII. *Changes.* 1. The Contracting Officer may at any time, with the consent of the Contractor, by a written order, make changes in this contract within the general scope thereof. If such changes cause an increase or decrease in the amount due under this contract, an equitable adjustment shall be made, and the contract shall be modified in writing accordingly.

ART. XXIII. *Alterations.* 1. The following changes were made in this contract before it was signed by the parties hereto:

FEDERAL REGISTER, Wednesday, April 21, 1943

In witness whereof, the parties hereto have executed this contract as of the day and year first above written:

THE UNITED STATES
OF AMERICA

By _____

(Official Title)

(Contractor)

By _____

(Business Address)

Witnesses as to signature
of Contractor

(Address)

(Address)

I _____ certify that I am the _____ Secretary of the corporation named as Contractor herein; that _____ who signed this contract on behalf of the Contractor was then _____ of said corporation; that said contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

In witness whereof, I have hereunto affixed my hand and the seal of said corporation this _____ day of _____, 19____.

(Corporate Seal)

(_____
Secretary)

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry _____, who signed this contract for _____ had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

(Contracting Officer)

Appendix A

(Note: This Appendix should contain a description of the facilities to be provided, including a small map showing their location and route, and small drawings or sketches of the type of facilities involved.)

Section 81.1316 is added as follows:

§ 81.1316 W. D. Contract Form No. 16.

Contract No. _____

LUMP SUM CONTRACT FOR ARCHITECT-ENGINEER SERVICES WITH OPTIONAL SUPERVISION

WAR DEPARTMENT

Architect-Engineer and Address:

Services in Connection With:

Location:

Amount: For Title I \$ _____

For Title II \$ _____

Payment: To be made by U. S. Army, at _____

The supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to, the following allotments, the available balances of which are sufficient to cover the cost of the same:

This contract was negotiated under and is authorized by the following laws:

LUMP SUM CONTRACT FOR ARCHITECT-ENGINEER SERVICES WITH OPTIONAL SUPERVISION

This Contract, entered into this _____ day of _____, 19____, by the United States of America (hereinafter

called the "Government"), represented by the Contracting Officer executing this contract and _____ a corporation organized and existing under the laws of the State of _____ a partnership consisting of _____ an individual trading as _____ in the City of _____ State of _____ (hereinafter called the "Architect-Engineer").

Witnesseth that:

Whereas, the accomplishment of the hereinafter described work and services is authorized by law and will facilitate the prosecution of the war; and

Whereas, the Government desires to engage the Architect-Engineer to render services as hereinafter set forth for the preparation of necessary reports, designs, drawings, specifications and other documents; and, at the option of the Government, for technical supervision of the construction of the project described in Article I-A hereof; and

Whereas, the Secretary of War has directed _____ to negotiate this Architect-Engineer Contract:

Now, Therefore, the parties hereto do mutually agree as follows:

TITLE I

Article I-A. *Description of Project.* 1. The Architect-Engineer shall, upon receipt of notice to proceed, perform all the services required under this contract for the project generally described as follows:

(hereinafter referred to as "the project"), located at or in the vicinity of _____, and more specifically described in Appendix "A" which is attached hereto and made a part hereof.

ART. I-B Statement of architect-engineer services.

The Architect-Engineer shall perform the following services:

1. Make such topographical and other surveys and maps as are specified in Appendix "A"; supervise necessary test borings and other subsurface investigations required by the Contracting Officer, but the cost of such borings and investigations shall be borne by the Government. This provision is not to be deemed to require the Architect-Engineer to make real estate surveys.

2. Establish a permanently monumented base line, with elevations, tied into the North American Datum.

3. Prepare, subject to the approval of the Contracting Officer, preliminary studies, sketches, and layout plans and reports including estimates of cost of the proposed project and of all structures, utilities and appurtenances thereto. But if more than three sets of such studies, sketches, plans, or reports are required because of changes initiated by the Contracting Officer, an adjustment in the contract price will be made as provided in Article III-E.

4. Adapt Government designs, drawings, specifications and standards for buildings and other structures as necessary to meet the requirements of the approved layout of the proposed project, and prepare detailed designs, specifications and drawings in required form for buildings and other structures for which Government designs are incomplete or unavailable.

5. When preliminary drawings are approved in writing by the Contracting Officer, prepare final designs, detailed working drawings and specifications in accordance with Government standards necessary for the effective coordination and efficient execution of the construction work and revise such drawings and specifications if necessary. All

such drawings may be prepared in pencil on pencil cloth. Prepare and furnish _____ sets of full size copies of working drawings; in the event additional copies are required the Government shall pay the cost thereof. There shall be included in the specifications all provisions which the Contracting Officer may direct to have incorporated therein relating to the advertising, negotiating, or awarding of construction contract or contracts, conditions under which the work shall be done, and any special provisions required by statute or existing War Department regulations or instructions.

6. Obtain necessary permits and approvals from all local, State and Federal authorities. Should it become necessary in the performance of the work and services for the Architect-Engineer to secure the right of ingress and egress to perform any of the work required by Title I hereof on properties not owned or controlled by the Government, the Architect-Engineer shall, if practicable, secure the consent of the owner, his representative, or agent, prior to effecting entry on such property. In the event the owner requires the payment of any fee for a license to enter upon and/or use such property, the Architect-Engineer, when so directed by the Contracting Officer, shall pay such fee and obtain a receipt therefor. The expenditures covering such fees shall constitute a reimbursable item under this contract, and the Architect-Engineer, upon presentation of a voucher therefor, duly supported by proper receipts attached thereto, shall be reimbursed for the full amount thereof.

7. Prepare an estimate of the cost of the proposed project based upon the approved designs, drawings and specifications therefor.

8. Prepare schedules and charts showing the sequence of operations in the construction of each of the several portions of the work.

9. Prepare estimates showing the quantities of critical and important materials and length of time after award of the construction contract when such materials will be required on the site.

10. Assist the Contracting Officer in preparing invitations for bids or proposals analyzing and evaluating bids or proposals for a construction contract or contracts based upon the approved drawings and specifications.

11. Check and approve all shop and working drawings submitted by the Constructor in connection with the construction work to assure that they conform with approved drawings.

12. During the construction period the Architect-Engineer shall furnish such advice as may be requested and an approved representative shall make _____ visits to the site of the work at periods required by the Contracting Officer; additional visits, if made, shall be paid for at _____ Dollars (\$_____) per day in full satisfaction therefor. In the event that the option of Title II is exercised, the provisions of this paragraph shall not apply.

ART. I-C. *Progress schedule.* 1. The Architect-Engineer shall, promptly after the execution of this contract, prepare and submit to the Contracting Officer, for approval, a schedule showing the order in which the Architect-Engineer proposes to carry on the work, with dates on which he will start the several salient features of the work and the contemplated dates for completing the same. Such schedule shall provide for completion of all work hereunder within the contract time. The schedule shall be in the form of a progress chart at suitable scale so as to indicate with symbols the percentage completed at any time. The Architect-Engineer shall cor-

*Delete all lines which do not apply.

rect the progress schedule at the end of each week and shall immediately deliver three copies to the Contracting Officer.

2. The Architect-Engineer shall furnish sufficient technical, supervisory and administrative personnel to insure the prosecution of the work in accordance with the approved progress schedule.

ART. I-D. *Period of service.* 1. The Architect-Engineer shall complete all work and services under Title I of this contract except work and services required under Article I-B, sections 11 and 12, within _____ months after receipt of notice to proceed.

ART. I-E. *Payment.* 1. In consideration of the performance of his undertakings under this Title I, the Architect-Engineer shall be paid the sum of _____ Dollars (\$_____), which shall constitute complete payment for all services required to be performed under this Title I and all expenditures which may be made and expenses incurred except as are otherwise expressly provided herein.

TITLE II

At any time prior to six months after satisfactory completion and acceptance of the work and services to be furnished under Title I except Article I-B, sections 11 and 12, the Government, at its option, may direct, by a written order, the Architect-Engineer to perform the work and services provided under this Title II. Upon receipt of such direction, the Architect-Engineer shall proceed with such work and services.

ART. II-A. *Services to be furnished by architect-engineer.*

The Architect-Engineer shall perform the following services:

1. Furnish all governing lines, bench marks and grades essential to the construction of the project.

2. Furnish a Resident Engineer and staff of assistants and other personnel to supervise the construction to assure that every part of the work is done in accordance with the approved drawings and specifications and within the areas and boundaries designated for the project. The Architect-Engineer will furnish _____ man-months of inspection service as required by the Contracting Officer.

3. Make all field tests at the site of the work and report to the Contracting Officer in writing as to the conformity or nonconformity of the materials and equipment and workmanship to specifications. The Architect-Engineer shall evaluate reports on such other tests of materials and equipment as may be required by the Contracting Officer, but the cost of such tests shall be borne by the Government.

4. Prepare, with the assistance of the Constructor, labor estimates showing the approximate numbers, trades and dates required to meet the approved construction schedule.

5. Prepare weekly progress reports in approved form showing the progress of the construction work and any deviation from the approved construction schedule.

6. Prepare, when required by the Contracting Officer, the partial and final construction estimates for payment.

7. Without additional compensation the Architect-Engineer or any member of the organization, when requested, shall consult and advise with the Contracting Officer on any questions which may arise in connection with the work under this contract.

8. Upon termination or completion of this contract as determined by the Contracting Officer, and before final payment, the Architect-Engineer shall:

a. Prepare record drawings to the satisfaction of the Contracting Officer to show details of construction as actually accomplished as follows:

(1) Drawings of topographical surveys, project layouts, utility layout maps, unit layout maps (including utilities), landscape layouts, and detailed drawings, for all special structures of a permanent nature, including sewage disposal plants, and water and electrical supply systems, shall be inked in on linen.

(2) All other record drawings shall be prepared in pencil on pencil cloth.

b. Assist the Contracting Officer in the preparation of the completion report for the project.

c. Supervise the testing of operating units to assure their conformance with specifications and furnish all engineering services necessary to secure such conformance.

d. Prepare instructions for the proper operation and maintenance of all utilities and operating equipment designed by the Architect-Engineer.

ART. II-B. *Period of service.* I. The period of service of the Architect-Engineer under Title II of this Contract shall be _____ months from receipt of the order to proceed, but the Government may extend such period as provided in Article III-E of this Contract.

ART. II-C. *Payment.* 1. In consideration of the performance of his undertakings under this Title II the Architect-Engineer shall be paid the sum of _____ Dollars (\$_____), which shall constitute complete payment for all services required to be performed under this Title II and all expenditures which may be made and expenses incurred except as are otherwise provided herein.

TITLE III

The provisions of this Title shall apply to this entire contract, towit: to Title I and likewise to Title II, should Title II become operative as provided herein.

ART. III-A. *Method of payment.* 1. Estimates shall be made semi-monthly of the amount and value of the work and services performed by the Architect-Engineer under this contract, determined in accordance with Appendix "A" attached hereto and made a part hereof.

2. Upon approval of such estimate by the Contracting Officer payment upon vouchers approved by the Contracting Officer shall be made to the Architect-Engineer as soon as practicable of 90% of the amount as determined above, less all previous payments.

3. In the event that the Government does not exercise the option under Title II of this contract within 30 days after the satisfactory completion and acceptance by the Contracting Officer of the work done by the Architect-Engineer under Article I-B, sections 1 through 10 inclusive, the Architect-Engineer shall be paid the unpaid balance of any money due for work done under said sections.

4. Upon satisfactory completion of the construction work and its final acceptance the Architect-Engineer shall be paid the unpaid balance of any money due hereunder. Prior to such final payment under the contract, or prior to settlement upon termination of the contracts, and as a condition precedent thereto, the Architect-Engineer shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Architect-Engineer from the operation of the release in stated amounts to be set forth therein.

ART. III-B. *Drawings and other data to become property of government.* 1. All notes, designs, drawings, specifications and other technical data are to become the property of the Government on completion as outlined in this contract, and the Government shall have full right to use those instruments for the purpose of constructing under contract or otherwise any buildings or other structures for the sole use of the Government when and where the Government

may designate, without any claim on the part of the Architect-Engineer for additional compensation.

2. All notes, designs, drawings, specifications and other technical data concerning the project shall be delivered to the Government whenever requested by the Contracting Officer, and, furthermore, access to such data shall be restricted to trusted and duly authorized representatives of the Government and of the Architect-Engineer.

ART. III-C. *Contracting officer's decisions.*

1. The extent and character of the work to be done by the Architect-Engineer shall be subject to the general supervision, direction, control and approval of the Contracting Officer to whom the Architect-Engineer shall report and be responsible. In the event that there should be any dispute with regard to the extent and character of the work to be done, the decision of the Contracting Officer shall govern, but the Architect-Engineer shall have the right of appeal as provided in Article III-D.

ART. III-D. *Disputes.* (Insert [(§ 326)] (§ 81.326))

ART. III-E. *Changes.* 1. The Contracting Officer may at any time, by a written order, and without notice to the sureties, make any changes in this contract which may either increase or decrease the services hereunder. If such changes cause an increase or decrease in the services required under this contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. No changes involving an estimated increase or decrease in the amount of payment for services of more than _____ Dollars (\$_____) shall be ordered unless approved in writing by the Secretary of War or his duly authorized representative. Any claim for adjustment under this article must be asserted within 10 days from the date the change is ordered: *Provided, however,* That the Contracting Officer, if he determines that the facts justify such action, may receive and consider, and with the approval of the Secretary of War or his duly authorized representative, adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Article III-D, but nothing provided in this article shall excuse the Architect-Engineer from proceeding with the prosecution of the work so changed.

ART. III-F. *Termination.* 1. The Government may terminate this contract at any time and for any cause by a notice in writing from the Contracting Officer to the Architect-Engineer. Upon receipt of such notice the Architect-Engineer shall, unless the notice directs otherwise, immediately discontinue all work.

2. If the contract is terminated for the convenience of the Government, payment to the Architect-Engineer will be made promptly for that proportion of the services required under the contract which the work actually performed bears to the total work required under the contract, less any payments previously made.

3. If this contract is terminated because of the failure on the part of the Architect-Engineer to fulfill his undertakings under this contract, the Government may take over the work and prosecute the same to completion by contract or otherwise, and the Architect-Engineer shall be liable to the Government for any excess cost occasioned to the Government thereby.

ART. III-G. *Covenant against contingent fees.* (Insert [(§ 323)] (§ 81.323))

ART. III-H. *Officials not to benefit.* (Insert [(§ 322)] (§ 81.322))

ART. III-I. *Assignment of claims.* (Insert [(§ 355)] (§ 81.355))

ART. III-J. *Convict labor.* (Insert [§345] (§ 81.345))

ART. III-K. *Dismissals.* 1. Should the continued employment, under this contract, of any person in the Architect-Engineer's organization be deemed by the Contracting Officer to be prejudicial to the interests of the Government, that person shall be immediately removed from the work. The Architect-Engineer shall make every reasonable effort in the selection of his employees and in the prosecution of the work under this contract to safeguard all drawings and specifications, and to prevent the theft or unauthorized use of the same.

ART. III-L. *Workmen's Compensation Laws.* 1. The Act of June 25, 1936 (49 Stat. 1938, 1939; 40 U. S. C. 290), provides that the several states have authority to make their Workmen's Compensation Laws applicable to contracts for the construction, alteration or repair of a public building or public work of the United States, and the several states are vested with the power and authority to enforce such state laws on lands of the United States.

ART. III-M. *Accident prevention.* 1. The Architect-Engineer will maintain an accurate record of, and will report to the Contracting Officer in the manner and on the forms prescribed by the Contracting Officer, all causes of death, occupational disease, and traumatic injury arising out of or in the course of employment on work under this contract.

ART. III-N. *Anti-discrimination.* (Insert [§325] (§ 81.325))

ART. III-O. *Renegotiation.* Pursuant to section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as Amended. (Insert [§342.1] (§ 81.342 (a)))

ART. III-P. *Definitions.* (Insert [§1301.22] (§ 81.1301 (v)))

ART. III-Q. *Approval.* 1. This contract shall be subject to the written approval of the _____ and shall not be binding unless so approved.

ART. III-R. *Alterations.* 1. The following changes were made in this contract before it was signed by the parties hereto:

In witness whereof, the parties hereto have executed this contract as of the day and year first above written:

THE UNITED STATES OF AMERICA,

By _____

(Official title)

By _____

(Architect-engineer)

By _____

(Business address)

Witnesses as to signature of Architect-Engineer

(Address)

(Address)

I _____
certify that I am the _____
Secretary of the corporation named as Architect-Engineer herein; that _____
who signed this contract on behalf of the Architect-Engineer was then _____
of said corporation; that said contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

In witness whereof, I have hereunto affixed my hand and the seal of said corporation this _____ day of _____, 19_____
(Corporate Seal)

(Secretary)

I hereby certify that, to the best of my knowledge and belief, based upon observation

and inquiry, _____ who signed this contract for _____ had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

(Contracting Officer)

PART 83—DISPOSITION OF SURPLUS AND UNSERVICEABLE PROPERTY

Section 83.106a is added as follows:

§ 83.706a. *Numbering and distribution of contracts of sale.* The provisions of § 81.309 and of § 81.318b (e) relating to the numbering of contracts are applicable to contracts for the sale of property except that in connection with contracts for the sale of property a separate series of numbers will be used in which the letter "s" will be added immediately after the letters representing the supply service (or service command) concerned. Contracts for the sale of property will be distributed in the same manner as other contracts (see §§ 81.315-81.318).

(Sec. 5a, National Defense Act, as amended, 41 Stat. 764, 54 Stat. 1225, 10 U.S.C. 1193-1195, and the First War Powers Act 1941, 55 Stat. 838, 50 U.S.C. Sup. 601-622)

[SEAL]

J. A. ULIO,
Major General,
The Adjutant General.

[F. R. Doc. 43-5972; Filed, April 16, 1943;
3:24 p. m.]

TITLE 32—NATIONAL DEFENSE

Chapter VI—Selective Service System

[No. 178]

REPORT ON OCCUPATIONAL DEFERMENT OF FEDERAL GOVERNMENT EMPLOYEES

ORDER PRESCRIBING FORM

By virtue of the provisions of the Selective Training and Service Act of 1940 (54 Stat. 885, 50 U.S.C., Sup. 301-318, inclusive); E.O. No 8545, 5 F.R. 3779, E.O. No. 9279, 7 F.R. 10177, and the authority vested in me by the Chairman of the War Manpower Commission in Administrative Order No. 26, 7 F.R. 10512, I hereby prescribe the following change in DSS forms:

Addition of a new form designated as DSS Form 38, entitled "Report on Occupational Deferment of Federal Government Employees,"¹ effective immediately upon the filing hereof with the Division of the Federal Register.

The foregoing addition shall become a part of the Selective Service Regulations effective immediately upon the filing hereof with the Division of the Federal Register.

LEWIS B. HERSHY,
Director.

APRIL 17, 1943.

[F. R. Doc. 43-6111; Filed, April 19, 1943;
3:56 p. m.]

¹ Form filed as part of the original document.

Chapter IX—War Production Board Subchapter B—Executive Vice Chairman

AUTHORITY: Regulations in this subchapter issued under P.D. Reg. 1, as amended, 6 F.R. 6680; W.P.B. Reg. 1, 7 F.R. 561; E.O. 9024, 7 F.R. 329; E.O. 9040, 7 F.R. 527; E.O. 9125, 7 F.R. 2719; sec. 2 (a), Pub. Law 671, 76th Cong., as amended by Pub. Laws 89 and 507, 77th Cong.

PART 3175—REGULATIONS APPLICABLE TO THE CONTROLLED MATERIALS PLAN

[CMP Regulation 1, Direction 5]

HEAT TREATED AND NORMALIZED CARBON AND ALLOY STEEL FOR COMMERCIAL WAREHOUSE ORDERS

The following direction is issued to all steel producers, pursuant to paragraph (t) of CMP Regulation No. 1:

(a) In order to reduce the excessive load on heat treating facilities, steel producers are hereby prohibited, until further notice, from shipping normalized or heat treated carbon or alloy steels on any commercial warehouse order, except as permitted by paragraph (b) hereof. For the purposes of this direction, "Commercial Warehouse Order" does not include orders for shipment to earmarked aircraft warehouse stock, or for direct shipment to a manufacturer of aircraft or aircraft parts, but does cover all other orders for shipment to warehouse stock or direct to a warehouse customer.

(b) Commercial warehouse orders already normalized or heat treated, or now in process of being normalized or heat treated, may be shipped when an as completed, if otherwise validated in accordance with applicable War Production Board orders or regulations.

(c) Commercial warehouse orders already melted but not yet in process of being normalized or heat treated should be renegotiated with the purchaser on the basis of furnishing plain hot rolled, annealed, and/or cold drawn steel.

(d) Commercial warehouse orders not yet melted should either be cancelled or should be renegotiated with the purchaser on the basis of furnishing plain hot rolled, annealed, and/or cold drawn steel.

Issued this 19th day of April 1943.

WAR PRODUCTION BOARD,

By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 43-6120; Filed, April 19, 1943;
5:03 p. m.]

PART 935—VINYL POLYMERS

[Allocation Order M-10, as Amended April 20, 1943]

The fulfillment of requirements for the defense of the United States has created a shortage in the supply of vinyl polymers for defense, for private account and for export; and the following order is deemed necessary and appropriate in the public interest and to promote the national defense:

§ 935.1 Allocation Order M-10—(a)
Definitions. For the purposes of this order:

(1) "Vinyl polymers" means plasticized or unplasticized polymers and copolymers of vinyl acetate, vinyl chloride and polyvinyl alcohol and includes their condensation products. Such term also includes, but is not limited to, vinyl chloride-acetate copolymers, polyvinyl butyral, polyvinyl formal and polyvinyl acetal and the materials known by the trade names of Koroseal, Vinylite V, Saran, Butvar, Formvar, Alvar, Butacite, Heydenite, Saflex, Vinylite X, Vinylite A, PVA, Gelva and Solva. Such term also includes vinyl polymer scrap regardless of the source from which derived. Such term shall not include acrylic resins as defined in Order M-260 (§ 3135.1).

(2) "Producer" means any person engaged in the production of any vinyl polymer and includes any person who has any vinyl polymer produced for him pursuant to toll agreement.

(b) *Restrictions on use and delivery.*

(1) No person, including a producer, shall use, deliver or accept delivery of vinyl polymers except as specifically authorized by the War Production Board upon application pursuant to paragraph (d).

(2) Each person authorized to use or to accept delivery of vinyl polymers shall use such vinyl polymers and products made from such vinyl polymers only for the purpose authorized, except as otherwise specifically directed by the War Production Board.

(3) The War Production Board at its discretion may from time to time issue special directions to any person with respect to the use or delivery of vinyl polymers by such person, or of products made from vinyl polymers allocated to such person, notwithstanding the provisions of paragraph (c), or may issue special directions to any producer with respect to the kinds of vinyl polymers which he may produce or manufacture.

(c) *Exemptions.* The specific authorization of the War Production Board pursuant to paragraph (b) (1) shall not be required with respect to the following:

(1) Delivery of vinyl polymers to a producer by any person, and the acceptance of such delivery.

(2) Delivery, acceptance of delivery or use by any person of any material made in whole or in part from vinyl polymers pursuant to any specific authorization or direction issued by the War Production Board: *Provided, however, That this exemption shall not be construed to apply to vinyl polymer scrap resulting from an authorized use of vinyl polymers.*

(3) Use and acceptance of delivery of 50 pounds or less of vinyl polymers by any person in any one calendar month. Authorization by the War Production Board is required to make such small order deliveries, upon application pursuant to paragraph (d) requesting

an aggregate quantity of vinyl polymers "for paragraph (c) (3) small orders".

(4) Acceptance of delivery of vinyl polymers by any person for experimental purposes, and the experimental use by such person of the vinyl polymers so delivered. Authorization by the War Production Board is required to make deliveries for experimental purposes, upon application pursuant to paragraph (d) requesting an aggregate quantity of vinyl polymers "for deliveries for experimental purposes".

(5) Delivery by any person of vinyl polymer scrap to, and acceptance of such delivery by, any person purchasing such scrap for resale as scrap without further processing except cleaning and sorting. In addition, delivery of vinyl polymers may be made and accepted without specific authorization in the case of special sales pursuant to the provisions of Priorities Regulation No. 13. However, the purchaser of vinyl polymers pursuant to the provisions of Priorities Regulation No. 13 is subject to the provisions of this order M-10 with respect to use or re-delivery of such vinyl polymers.

(d) *Reports.* In addition to such other reports as may from time to time be required by the War Production Board:

(1) Each person seeking authorization to use or accept delivery of any vinyl polymer pursuant to paragraph (b) (3) hereof, shall apply for such authorization on Form PD-36. Such applicant shall file with the War Production Board the original and two copies of such form on or before the 20th day of the month preceding the month for which such authorization is requested, which form shall be prepared in the manner prescribed therein.

(2) Each producer of vinyl polymers, including each person producing vinyl polymers for another pursuant to toll agreement, shall file a report on Form PD-33, in the manner prescribed therein, on or before the 25th day of each calendar month.

(e) *Notification of customers.* Producers shall, as soon as practicable, notify each of their regular customers of the requirements of this order, but failure to give such notice shall not excuse any such person from complying with the terms thereof.

(f) *Miscellaneous provisions—(1) Applicability of priorities regulations.* This order and all transactions affected hereby are subject to all applicable provisions of War Production Board Priorities Regulations, as amended from time to time.

(2) *Violations.* Any person who wilfully violates any provision of this order, or who, in connection with this order, wilfully conceals a material fact, or furnishes false information to any department or agency of the United States is guilty of a crime, and upon conviction may be punished by fine or imprisonment. In addition, any such person may

be prohibited from making or obtaining further deliveries of, or from processing or using, material under priority control and may be deprived of priorities assistance.

(3) *Communications to War Production Board.* All reports required to be filed hereunder, and all communications concerning this order, shall, unless otherwise directed, be addressed to: War Production Board, Chemicals Division, Washington, D. C. Ref: M-10.

Issued this 20th day of April 1943.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

11:29 a. m.]

[F. R. Doc. 43-6161; Filed, April 20, 1943;

PART 1075—CONSTRUCTION

[Conservation Order L-41, as Amended April 20, 1943]

§ 1075.1 *Conservation Order L-41—*

(a) *Definitions.* For the purpose of this order:

(1) "Person" means any individual, partnership, association, business trust, corporation, governmental corporation or agency, or any organized group of persons, whether incorporated or not.

(2) "Construction" means the erection, construction, reconstruction, restoration, or remodeling of any structure or project, or additions thereto or extensions or alterations thereof, but not including:

(i) "Maintenance and repair" as defined in paragraph (a) (12);

(ii) The excavation or other movement of earth where no material except earth or other unprocessed material is to be incorporated.

(3) "Residential construction" means any construction where the principal designed function of the structure or project is or will be to provide living space or accommodations.

(4) "Multiple residential construction" means any residential construction where the principal designed function of the structure or project is or will be to provide living space or accommodations for six or more families, or which is divided or to be divided into six or more suites.

(5) "Agricultural construction" means any construction, (other than residential construction), where the principal designed function of the structure or project is or will be the production of agricultural products including, but not limited to, those produced by farmers, planters, ranchmen, dairymen, poultrymen, or nut or fruit growers.

(6) "Industrial construction" means any construction where the principal designed function of the structure or project is or will be the manufacture, processing or assembling of goods or materials.

(7) "Other restricted construction" means any construction, other than residential, multiple residential, agricultural, or industrial construction, including, but not limited to, commercial, highway, roadway, sub-surface, railroad, and utilities construction, whether publicly or privately financed.

(8) "Project" means all separate structures or units of construction situated in close proximity to each other and integrated to serve a single general use; it does not mean a particular construction operation or job. In no case shall a single structure or unit of construction be subdivided into more than one project for the purpose of this order.

(9) "Begin construction" means to initiate construction, or to resume construction which has not been carried on as one continuous construction job, by physically incorporating or installing into a structure or project on the site, material which is to be an integral part of the structure or project.

(10) "Cost" shall be the sum of the total cost or value, whichever is higher, of the following (except as qualified in (a) (11) below):

(i) Material which is to be an integral part of the structure or project, including articles, chattels, or fixtures which are to be physically incorporated in and used as a part of the structure or project, or are to be so substantially affixed thereto that they cannot be detached without materially injuring them or the structure or project;

(ii) Labor engaged in the construction;

(iii) Architects', engineers' and contractors' services.

(11) "Cost" does not include the following:

(i) The value of used material, articles, chattels or fixtures which have been severed from the same or another structure or project and are to be used without change in ownership, nor the cost or value of labor engaged in incorporating the same;

(ii) The cost or value of production machinery or equipment to be used directly in the manufacturing, processing or assembling of goods or materials;

(iii) The value of labor, not entailing financial outlay, of an owner or tenant and members of the owner's or tenant's immediate family residing with him, on a structure or project owned or leased by him.

(12) "Maintenance and repair" means such work as is necessary to keep a structure or project in sound working condition, or to rehabilitate a structure or project or any portion thereof when the same has been rendered unsafe or unfit for service by wear and tear or other similar causes. The term does not include any building operation or job where a structural alteration or change in design is to be made. However, different materials may be used and different types of articles, chattels or fixtures (but of the same general nature) may be incorporated, provided that there are no such structural alterations or changes in design. No building operation or job may be part construction and part maintenance and repair, as the terms are used herein, but if any construction is to be done, the entire building operation or job is construction. Maintenance and repair does not include the reconstruction or restoration of a structure or project or portion thereof destroyed by fire, flood, tornado, earthquake, act of God or the public enemy.

(b) *Prohibited construction.* (1) No person shall begin construction, carry on any construction begun in violation of any order in the L-41 series, cause such construction to be begun or carried on or participate in such construction, or order, purchase, accept delivery of, withdraw from inventory or in any other manner secure or use material for such purposes.

(2) The terms and restrictions of (b) (1) shall not apply where the construction is of:

(i) A structure or project to be the property of the Army or Navy of the United States, the United States Maritime Commission, Panama Canal, the Coast and Geodetic Survey, the Coast Guard, the Civil Aeronautics Authority, or the Office of Scientific Research and Development;

(ii) A structure or project which is to be used directly in the discovery, development or depletion of mineral deposits;

(iii) A type subject to the provisions of any order in the M-68 series (Part 1047) relating to the production and distribution of petroleum, or is of a type subject to the provisions of any Petroleum Administrative Order (Chapter XIII), and such construction is permitted only to the extent authorized by the applicable order in the M-68 series or by the applicable Petroleum Administrative Order;

(iv) Telephone facilities or equipment, including facilities or equipment for such telegraph or teletypewriter service as may be conducted by a telephone operator, other than buildings, and is authorized or permitted under the terms of Order L-50 (§ 1095.1);

(v) Railroad tracks, together with necessary operating facilities, but not including buildings, tunnels, overpasses, underpasses, or bridges;

(vi) Facilities, other than buildings, to be owned by a producer, as defined in Order P-46 (§ 978.1), pertaining to utilities, and which are to be used directly in providing one or more of the services set forth in paragraph (a) (1) of said order;

(vii) Irrigation pipe lines or drainage tile drains, classified as agricultural construction under this order, in which no materials except earth or other unprocessed material or clay or non-reinforced concrete tile not more than 12 inches in internal diameter are incorporated.

(viii) Agricultural construction necessary to the installation of material or equipment, the distribution of which is controlled by Order L-170 (§ 1029.10) or orders in the M-21 series (Part 962), and which are listed in Schedule 1 of Food Production Order 3 of the United States Department of Agriculture.

(ix) A structure or project for which no material will be used to provide electric, gas, water, or steam services for the incorporation of which specific authorization is required under orders in the U series (unless such authorization has been received before construction was begun), provided it is

(a) Residential construction and not multiple residential construction, or is specifically listed on Schedule B attached hereto, and the estimated cost of construction is less than \$200; or

(b) Multiple residential, agricultural or other restricted construction, is not specifically listed on Schedule B, and the estimated cost of construction is less than \$1,000; or

(c) Industrial construction, is not specifically listed on Schedule B, and the estimated cost of construction is less than \$5,000; or

(d) The minimum construction necessary to make safe and to protect any structure or project (or the contents thereof) damaged or destroyed by fire, flood, tornado, earthquake, act of God or the public enemy; or

(e) Agricultural construction, and the immediate construction thereof is determined by the United States Department of Agriculture in accordance with such administrative procedures as may be from time to time prescribed, to be necessary to avert threatened loss of farm products: *Provided*, That within two weeks of such determination Form PD-200 is filed in accordance with the provisions of paragraph (f) of this section.

(3) The terms and restrictions of (b) (1) shall not apply where the construction is to reconstruct or restore:

(i) Residential or multiple residential construction damaged or destroyed by fire, flood, tornado, earthquake, act of God or the public enemy, or to build in its place and stead new residential or multiple residential construction: *Provided*, however, That the estimated cost of such reconstruction, restoration, or new construction shall be less than \$5,000, and that within two weeks of such damage or destruction Form PD-105 (for residential) or Form PD-200 (for multiple residential) is filed in accordance with the provisions of paragraph (f) of this section;

(ii) Agricultural construction damaged or destroyed by fire, flood, tornado, earthquake, act of God or the public enemy where the immediate reconstruction thereof is determined by the United States Department of Agriculture, in accordance with such administrative procedures as may be from time to time prescribed, to be essential to the agricultural program: *Provided*, That within two weeks of such damage or destruction Form PD-200 is filed in accordance with the provisions of paragraph (f) of this section;

(iii) Industrial or other restricted construction, not specifically listed on Schedule B, damaged or destroyed by fire, flood, tornado, earthquake, act of God or the public enemy, where the immediate reconstruction thereof is necessary for the prosecution of the war or the protection of public health or safety: *Provided*, That within five days of the damage or destruction notice thereof is given by telegraph to the War Production Board setting forth (a) the cause of the damage or destruction, (b) the function of the structure or project which has been damaged or destroyed, (c) the type of construction, (d) why immediate reconstruction or restoration is necessary, and (e) the estimated cost of reconstruction: *And provided further*, That within two weeks of the giving of such tele-

graphic notice, Form PD-200 is filed in accordance with the provisions of paragraph (f) of this section. Nothing contained in this subparagraph (3) shall be interpreted as a commitment that priorities assistance will be accorded to any particular construction authorized by the provisions of this subparagraph and the War Production Board may at any time either order said construction to cease or require any modification thereof that seems to it to be proper.

(4) The terms and restrictions of (b) (1) shall not apply where the construction has been or is hereafter authorized by the Director of Priorities of the Office of Production Management or by the War Production Board by the issuance of:

(i) One of the preference rating orders or certificates listed on Schedule A attached hereto, as that schedule may be amended from time to time, according priorities assistance to the construction; or

(ii) An order specifically authorizing the construction.

(5) The exceptions set forth in paragraphs (b) (2) (ix) (a), (b) (2) (ix) (b), and (b) (2) (ix) (c) shall not be construed to authorize separate or successive construction operations commencing after September 6, 1942, the aggregate cost of which over any continuous twelve-month period exceeds the amount specified in the applicable paragraph for the particular structure or project; not including in said aggregate cost the cost of any construction thereon during said period authorized under the provisions of paragraph (b) (2) (ix) (d), (b) (2) (ix) (e), (b) (3) and (b) (4).

(c) *Prohibited deliveries.* No person shall accept an order for, sell, deliver, or cause to be delivered material which he knows, or has reason to believe, will be used in violation of the terms of this order.

(d) *Further construction limitations.* Nothing in this order shall be construed to authorize the use or delivery of any material, or the application or extension of any preference rating, in violation of the provisions of any conservation, limitation or other order or regulation heretofore or hereafter issued by the Director of Priorities, Office of Production Management, or by the War Production Board.

(e) *Orders or certificates not constituting authorization.* The assignment of a preference rating by a PD-1, PD-1A, or other certificate, or by any order, other than those listed on Schedule A, shall not constitute authorization to begin construction.

(f) *Application for authority to begin construction.* (1) The application forms prescribed by paragraphs (f) (2) and (f) (3) hereof shall be executed by the person who is or is to be the owner of the structure or project for which authorization is required by the terms of this order, or his duly authorized agent.

(2) If the applicant requires priorities assistance for the proposed construction, an application shall be made for the appropriate preference rating order

or certificate listed on Schedule A on the form referred to therein.

(3) Where the applicant does not require priorities assistance, application for specific authorization to begin construction referred to in paragraph (b) (4) (ii) hereof may be made by filing Form PD-200, or such other forms as may hereafter be prescribed. Such forms are to be filed in the manner prescribed on Schedule A for the filing of applications for Preference Rating Order P-19-h.

(g) *Violations.* Any person who wilfully violates any provision of this order, or who, in connection with this order, wilfully conceals a material fact or furnishes false information to any department or agency of the United States, is guilty of a crime, and upon conviction may be punished by fine or imprisonment. In addition, any such person may be prohibited from making or obtaining any further deliveries of, or from processing or using, material under priority control and may be deprived of priorities assistance.

(h) *Communications.* Applications, communications and reports under this order shall, unless otherwise directed in Schedule A or by specific instructions

be addressed to: War Production Board, Washington, D. C. Ref.: L-41.

Those relating to residential construction shall in addition be conspicuously marked "Res.", those relating to multiple residential construction "M. R.", those relating to agricultural construction "Agr.", those relating to industrial construction "Ind.", and those relating to other restricted construction "O. R."

This order, as amended, shall supersede all orders, amendments and interpretations in the L-41 series issued prior to February 19, 1943, except L-41-a, L-41-b and its interpretation, and L-41-c.

Issued this 20th day of April 1943.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

SCHEDULE A

The following preference rating orders and certificates are listed pursuant to paragraph (b) (4) (1) of the above order. A general description of the type of construction covered by each, the appropriate application form and where such form should be filed, are given solely for the purposes of identification.

Preference rating order	Type of construction	Application form	Where filed
P-14-a	Shipyards and shipways	No form	Maritime Commission, Washington, D. C.
P-14-b			
P-19			
P-19-a	Structures or projects important to the war effort and essential civilian needs, other than housing.	No further application accepted under P-19 and P-19-a. Apply for P-19-h.	
P-19-d	Publily financed war housing	No further applications accepted; see P-19-h.	
P-19-g		Application is made by or through the Public Roads Administration of F. W. A.	
P-19-e	Public roads	Form PD-200	
P-19-h			
P-19-i	Structures and projects important to the war effort and essential civilian needs, including war housing owned by FPHA and farm dwellings (for other housing see P-55 below)		At the following places or such other places as may be prescribed: Agricultural and farm dwellings with Department of Agriculture County War Board having jurisdiction over location of the site. All other types of construction with War Production Board, Washington, D. C.
P-41	Construction of air transport facilities	Expired Oct. 1, 1942	
P-55	Housing and Remodeling of housing except farm dwellings and housing owned by the FPHA.	Form PD-105 and Form PD-105A	With FHA field office having jurisdiction over location of the site.
P-55 Amended			
P-80 as amended	Construction of certain types for production of chemicals.	Form PD-315	With War Production Board Washington, D. C., Ref: P-89
P-98-b	Construction related to petroleum enterprises as defined and limited therein.	See orders in M-68 series	
P-110	Remodeling of housing programmed for critical areas by the National Housing Agency	No further applications accepted.	
P-130	Construction of certain facilities other than buildings by telephone companies and construction by such companies of facilities necessary to serve defense projects	See order Form PD-685	With War Production Board, Washington, D. C., or such other place as may be prescribed.
P-132	Construction of certain facilities other than buildings by telegraph companies and construction by such companies of facilities necessary to serve defense projects	See order Form PD-683	With War Production Board, Washington, D. C., or such other place as may be prescribed.
Certificates: PD-3 PD-3A	Certain specific types of construction of the Army or Navy	PD-3A	With the contracting or procurement official having jurisdiction of the contract.

SCHEDULE B

The following structures or projects are listed pursuant to paragraphs (b) (2) (ix) and (b) (3) (iii) of the above order:

(a) A structure or project which has as its principal designed function:

(1) Public or private amusement, entertainment or recreation, with the exception of playgrounds for children;

(2) Occupancy by not more than five establishments selling or dispensing goods, merchandise, food or drink, or providing services;

(3) Use as a club, lodge, fraternity or sorority house, association, auditorium or assembly hall;

(4) Manufacture, processing or assembling of any one or more of the following:

(i) Athletic supplies, sporting goods, or toys or games as defined in Order L-81.

(ii) Beverages, except milk.

(iii) Books, magazines, newspapers, greeting cards, or other printed or engraved matter.

(iv) Candy or chewing gum.

(v) Cigars, cigarettes, smoking or chewing tobacco or snuff.

(vi) Jewelry, watches, traveling bags, brushes, razors, pipes and like articles for personal use or adornment.

(vii) Furniture, silverware, china, household electrical appliances, draperies, and all other similar articles.

(viii) Musical instruments.

(ix) Stationery or office supplies.

(x) Toiletries or cosmetic products as defined in Order L-171.

(xi) Wearing apparel of every sort, nature or description, except for the Army or Navy;

(b) Industrial construction with a productive floor area of less than 10,000 square feet.

INTERPRETATION 1

(a) Paragraph (a) of Conservation Order No. L-41, as amended, places in different classes the construction of various structures or projects, and paragraph (b) (2) (ix) provides the limits within which the several classes of construction may be begun without authorization. Any structure shall be classified in accordance with such provisions unless it constitutes a part of a "project" as defined in paragraph (a) (8), in which event the classification of the project shall control.

(b) In connection with paragraphs (a) (3), (a) (4), (a) (5), (a) (6), and (a) (7), where part of a structure or project falls within one class under said order and other parts within another or other classes, the predominant designed use shall determine the classification of the whole structure or project.

(c) In connection with paragraphs (a) (5) and (a) (7), a structure to be used primarily for the storage of farm products which are produced by a person other than the proprietor of such structure shall be interpreted to be "other restricted construction."

(d) "Construction" as defined in paragraph (a) (2) includes the laying of asphalt tile, linotile, cork tile, rubber tile, and linoleum, if the same is cemented to or in any way is affixed to the construction.

(e) The application of siding or roofing is "construction" as the word is used in paragraph (a) (2), where such siding or roofing is applied to a portion of a building or structure which is not in need of "maintenance and repair" as the words are used in paragraph (a) (12). (Issued February 19, 1943)

[F. R. Doc. 43-6166; Filed, April 20, 1943; 11:31 a. m.]

PART 3119—REAGENT CHEMICALS

[Preference Rating Order P-135, as Amended April 20, 1943]

§ 3119.1 Preference Rating Order P-135—(a) Definition. For the purposes of this order the term "reagent chemical" means any chemical prepared and packed for reagent use in laboratories.

(b) Assignment of preference rating. Preference rating AA2X is hereby assigned to deliveries of any reagent chemical for use by any laboratory for analytical, testing, control, educational or research purposes and to deliveries of any material (not including repair,

maintenance and operating supplies) which will enter, at any stage, into the production of any such reagent chemical.

Nothing contained in this order shall prevent the use of any other or higher rating to which any person operating a laboratory or any producer of reagent chemicals may be entitled by reason of any other preference rating certificate or order.

(c) Application and extension of rating. The preference rating assigned by paragraph (b) hereof shall, subject to the provisions of paragraph (d) hereof, be applied or extended only in accordance with the provisions of Priorities Regulation No. 3, as amended from time to time.

(d) Restrictions on applications and extensions of rating. The preference rating hereby assigned shall not be applied:

(1) To obtain deliveries of any reagent chemical or material:

(i) Which will be incorporated in, or which will enter into any chemical reaction directly involved in the manufacture of any product, other than a reagent chemical, manufactured for sale;

(ii) Which will be used in the rendering of any service other than analytical, testing, control, educational or research laboratory services.

(2) To obtain deliveries during any calendar quarter of reagent chemicals, and material (not including maintenance, repair and operating supplies) which will enter, at any stage, into the production of reagent chemicals, greater in dollar value than the sum of the following:

(i) Twenty-five percent (25%) of the total dollar value of reagent chemicals and such material delivered, for analytical, testing, control or research purposes (exclusive of educational purposes) or for the manufacture of such reagent chemicals, to the person applying the rating hereby assigned during the twelve (12) month period ended September 30, 1942, and

(ii) One hundred percent (100%) of the total dollar value of reagent chemicals and such material delivered, for educational purposes or for the manufacture of reagent chemicals for such purposes, to the person applying the rating hereby assigned during such twelve (12) month period: *Provided, however, That the dollar value of deliveries of reagent chemicals for educational purposes and of material which will enter into the production of reagent chemicals for educational purposes, to which such preference rating may be applied in any four successive quarters shall not exceed one hundred percent (100%) of the total dollar value of reagent chemicals and such material delivered for such purposes to the person applying the rating during such twelve (12) month period.*

(3) If during any calendar quarter or other applicable period the dollar volume of production, services rendered, appropriations for research or number of students enrolled, by the person applying the rating hereby assigned, is greater than for the corresponding quarter or other period of the twelve (12) months

ended September 30, 1942, the allowable dollar value to which the rating hereby assigned may be applied in terms of paragraph (d) (2), may be increased in proportion to the increase in production, services rendered, research appropriation or enrollment.

(4) The quantitative restrictions of CMP Regulations 5 and 5A shall not apply to deliveries of reagent chemicals or of material (not including maintenance, repair and operating supplies) which will enter into the production of reagent chemicals.

(e) Miscellaneous provisions—(1) Applicability of priorities regulations. This order and all transactions affected hereby are subject to all applicable provisions of priorities regulations of the War Production Board, as amended from time to time.

(2) Communications to War Production Board. All communications concerning this order shall, unless otherwise directed, be addressed to: War Production Board, Chemicals Division, Washington, D. C. *Rec: P-135.*

Issued this 20th day of April 1943.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 43-6166; Filed, April 20, 1943; 11:31 a. m.]

PART 3175—REGULATIONS APPLICABLE TO THE CONTROLLED MATERIALS PLAN

[Interpretation No. 5 of CMP Regulation No. 1]

It is provided in § 3175.1 (s) (6) that a delivery order placed by a consumer for controlled material before he has received his allotment may afterwards be converted into an authorized controlled material order by furnishing the necessary information and certificate. Such conversion is not retroactive in effect. The order must be treated as an authorized controlled material order as of the date on which the necessary information and certificate (including the allotment number) are furnished to the producer, unless the War Production Board has previously expressly authorized the filling of the particular order, in which case it is to be treated as an authorized controlled material order received on the date of receipt of such authorization by the producer.

It follows from the foregoing that the controlling date for purposes of determining whether an order has been placed sufficiently far in advance to comply with the requirements of paragraph (s) (4) and the accompanying Schedule III is the date on which the order becomes an authorized controlled material order. For example, a manufacturer on May 1 places an order for carbon steel structural shapes to be delivered in July. He has not yet received his allotment for the related production schedule. The steel mill may receive and record the order without the allotment number but is not required to do so. In any event, the mill may not then treat it as an authorized controlled material order. The customer furnishes the necessary infor-

mation and certificate, including the allotment number, on May 20. Since this is later than the advance period of 45 days specified in Schedule III, the mill may refuse to schedule the order, or may in its discretion accept the same as a late authorized controlled material order, provided it does not discriminate in doing so, as further explained in Interpretation No. 1 of CMP Regulation No. 1. If the mill received on May 15th an express direction or other express authorization from the War Production Board to fill the particular order, the mill would treat the order as an authorized controlled material order received on that date and would be required to accept it and schedule it for delivery accordingly.

Issued this 20th day of April 1943.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 43-6162; Filed, April 20, 1943;
11:29 a. m.]

PART 3175—REGULATIONS APPLICABLE TO THE CONTROLLED MATERIALS PLAN

[Interpretation 2 to CMP Regulation 5]

A person who is permitted to get controlled materials under paragraph (c) (1) of CMP Regulation No. 5 for maintenance, repair and operating supplies is not entitled to use the MRO symbol for purposes of allotting controlled materials to others. For example, a manufacturer of a product listed in Schedule I or Schedule II of the regulation requires a spring as a repair part. He may use the MRO symbol to place an authorized controlled material order for steel which he will fabricate into the spring which he requires, but if he buys the spring from a spring manufacturer, he may not make an allotment with the MRO symbol to the spring manufacturer. The spring manufacturer receives his allotment direct from the War Production Board as provided in paragraph (k-1) of CMP Regulation No. 1.

Issued this 20th day of April 1943.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 43-6163; Filed, April 20, 1943;
11:29 a. m.]

PART 3175—REGULATIONS APPLICABLE TO THE CONTROLLED MATERIALS PLAN

[Interpretation 1 of CMP Regulation 5A]

Interpretations of the various provisions of CMP Regulation No. 5 are equally applicable to the corresponding provisions of CMP Regulation No. 5A. In most cases, the provisions of the two regulations are similar although there are several important differences and, therefore, care should be exercised to ascertain that the provision of CMP Regulation No. 5 covered by a particular interpretation corresponds in substance

to the provision of CMP Regulation No. 5A to which it is sought to be applied.

Issued this 20th day of April 1943.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 43-6164; Filed, April 20, 1943;
11:29 a. m.]

Chapter X—Federal Works Administrator

PART 1201—DISCRIMINATION IN DEFENSE HOUSING OR DEFENSE PUBLIC WORKS

DEFENSE PUBLIC WORKS

Section 1201.3 of the regulation providing against discrimination in work on defense housing, dated January 6, 1941 (6 F.R. 196), as amended by the regulation providing against discrimination in work on defense public works, dated September 11, 1941 (6 F.R. 4737), and by the regulation providing against discrimination in work on defense public works in and near the District of Columbia, dated January 5, 1943 (8 F.R. 328), is hereby amended to read as follows:

§ 1201.3 Negro labor and defense public works. In order to ascertain compliance, in respect to Negro labor, with § 1201.1, providing against discrimination in work on defense public works, it is requested that:

(a) Contracting officers in charge of the development of defense public works undertaken, and public and private agencies to which loans or grants are made for defense public works, pursuant to the Act of October 14, 1940 (Public No. 849, 76th Congress), as amended, shall, after the effective date of this section:

(1) Submit to each contractor engaged in constructing any such defense public works, the percentage of Negro skilled and unskilled labor in the locality of the project, as reflected by the Federal census and other relevant data, as determined by the Assistant Federal Works Administrator.

(2) Require each contractor engaged in constructing any such defense public works to indicate by notation (W for non-Negro, N for Negro) on payroll forms required to be submitted to the Government, or to such public or private agencies, the race of each laborer, skilled or unskilled, listed on such payroll forms; and

(3) Ascertain and report to the Bureau of Labor Statistics through appropriate channels at designated intervals during the construction period, the respective amounts paid by each such contractor during such period as wages, for work in the development of defense public works at the sites thereof to (i) non-Negro skilled labor (irrespective of individual trades); (ii) Negro skilled labor (irrespective of individual trades); (iii) non-Negro unskilled labor; and (iv) Negro unskilled labor.

(b) If the percentages of the total amounts so paid for all skilled labor and for all unskilled labor that are paid, respectively, to Negro skilled and unskilled labor approximate the respective percentages of Negro skilled and unskilled laborers in the locality (as submitted to the contractor by the contracting officer or by the public or private agency), there shall be deemed to be *prima facie* evidence that the contractor is not discriminating against Negro labor. Otherwise, or if any contractor shall fail or refuse to make the payroll notations hereinabove referred to, the contracting officer (as to defense public works constructed pursuant to subparagraph (b) of section 202 of said Act of October 14, 1940, as amended) or the public or private agency (as to defense public works for which loans or grants have been made pursuant to subparagraph (c) of section 202 of said Act of October 14, 1940, as amended) shall investigate and report the reasons therefor to the Assistant Federal Works Administrator.

(c) Copies of this regulation shall be distributed to all contractors engaged in the development of defense public works under the aforesaid Act of October 14, 1940, as amended.

(d) As used in this regulation, the term "contractor" includes subcontractors.

(Sec. 308, Pub. Law 849, 76th Cong., as amended by Pub. Laws 42, 137, 409, 522, and 723, 77th Cong.)

In testimony whereof, I have hereunto set my hand and official seal in the city of Washington this 19th day of April 1943.

[SEAL] PHILIP B. FLEMING,
Administrator.

[F. R. Doc. 43-6125; Filed, April 20, 1943;
9:45 a. m.]

Chapter XI—Office of Price Administration

PART 1305—ADMINISTRATION

[Gen. RO 5.¹ Amendment 15]

FOOD RATIONING FOR INSTITUTIONAL USERS

A rationale for this amendment has been issued simultaneously herewith and has been filed with the Division of the Federal Register.*

General Ration Order No. 5 is amended in the following respects:

1. Sections 7.1 (c), 7.3 (e), 13.3 (b) (7), 15.2 (a) and the definition of "dollar revenue" in section 22.1 are amended by inserting the words "pursuant to written contract with an agency of the United States" after the words "commissioned or non-commissioned officer".

*Copies may be obtained from the Office of Price Administration.

¹ 8 F.R. 2195, 2348, 2598, 2666, 2667, 3178, 8216, 3255, 3616, 3851, 4325, 4131, 4784, 4785, 4839.

2. Section 7.5 is added to read as follows:

SEC. 7.5 Change of registration to include certain military and naval personnel. (a) An institutional user who, when he registered under this order, excluded from his report of dollar revenue, December use, or number of persons served, food service to Army, Navy, Marine Corps, or Coast Guard personnel or selectees, for which government meal tickets were received, shall change his registration to include such service. His base for each rationed food shall be recomputed on the basis of the changed registration and his allotments for the second and subsequent allotment periods shall be calculated on the recomputed base.

(b) The board shall add to his allotments for the second allotment period, the difference between the allotments he would have received for the first period if the recomputed base had been used and the allotments he actually received for that period. However, from this sum there shall be deducted the amount of any ration checks or certificates received by him for food served to military or naval personnel from March 1, 1943 to April 30, 1943, inclusive, other than those received for service to military or naval personnel during that period pursuant to a written contract with a government agency, where government meal tickets were not used.

(c) Ration checks or emergency acknowledgments may not be issued by the Army, Navy, Marine Corps, or Coast Guard or accepted by an institutional user, for service on government meal tickets.

3. Article XXV and section 25.1 are revoked and a new Article XXV and sections 25.1 and 25.2 are added to read as follows:

Article XXV—Obtaining Rationed Foods for Service to Certain Military and Naval Personnel

SEC. 25.1 Obtaining rationed foods for service to military or naval personnel pursuant to written contract. (a) Whenever, pursuant to a written contract made with an agency of the United States, an institutional user needs (or has used) rationed foods for the preparation of food which he will serve (or has served) to Army, Navy, Marine Corps, or Coast Guard personnel messed under the command of a commissioned or non-commissioned officer and for which government meal tickets will not be (or were not) received, an officer authorized by the Army, Navy, Marine Corps, or Coast Guard may issue ration checks to him or to his supplier, for the amount of rationed foods needed (or used) for such purpose.

(b) If, for any reason, ration checks are not available, an authorized officer may issue an emergency acknowledgment instead of a ration check. The emergency acknowledgment may be in any form, but must show the name and address of the person to whom it is issued, the amount of rationed foods for which it is issued (in points for foods rationed under a point system, and in pounds for other rationed foods) and the

date of issuance. The person who issues the acknowledgment must sign his name, state his rank and the name and address of the activity or organization to which he is attached. The emergency acknowledgment must be exchanged for a ration check when ration checks are available, upon presentation to the activity or organization named thereon.

(c) The weight of any substitute or substance, including but not limited to chicory, cereal, peas or beans, mixed, blanched or compounded (or to be mixed, blanched or compounded) by the institutional user with the roasted coffee used (or to be used) shall not be included in the amount of any ration check or emergency acknowledgment issued for coffee pursuant to this section.

SEC. 25.2. How organized messes obtain rationed food. (a) The Army, Navy, Marine Corps, or Coast Guard may authorize messes organized pursuant to their respective regulations to draw on exempt ration bank accounts or to open exempt ration bank accounts in accordance with arrangements made with the Office of Price Administration. Messes so authorized are not required to register with a board under this order. They may acquire rationed foods only in exchange for ration checks drawn on such accounts in accordance with instructions issued by the Army, Navy, Marine Corps, or Coast Guard.

This amendment shall become effective April 19, 1943.

NOTE: The reporting provisions of this amendment have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(Pub. Law 671, 76th Cong.; as amended by Pub. Laws 89, 421, and 507, 77th Cong.; E.O. 9125, 7 F.R. 2719; E.O. 9280, 7 F.R. 10179; W.P.B. Dir. 1, Supp. Dir. 1-E, 1-M, and 1-R, 7 F.R. 562, 2965, 7234, 9684, respectively, Food Dir. 3, 5, 6 and 7, 8 F.R. 2005, 2251, 3471, 3471, respectively)

Issued this 19th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6114; Filed, April 19, 1943; 4:39 p. m.]

PART 1305—ADMINISTRATION

[Gen. RO 5, Amendment 1 to Supp. 1]

FOOD RATIONING FOR INSTITUTIONAL USERS

Correction

In the document appearing on page 4840 of the issue for Wednesday, April 14, 1943, the table in § 1305.203 (c) should read as follows:

Rationed food	Allowance per person
Processed foods	.06 points
Sugar:	
1. For Group III institutional users only:	
(i) For allotment period ending April 30, 1943	.03 pounds
(ii) For the second and subsequent allotment periods	.04 pounds
2. For Group II institutional users only:	
(i) For all allotment periods	.03 pounds
Coffee	.013 pounds

PART 1341—CANNED AND PRESERVED FOODS

[MPR 306, Amendment 7]

CERTAIN PACKED FOOD PRODUCTS

Correction

In paragraph 1 of the document appearing on page 4840 of the issue for Wednesday, April 14, 1943, the reference to § 1341.563 (a) (2) should be to § 1341.583 (a) (2).

PART 1351—FOOD AND FOOD PRODUCTS

[MPR 237, Amendment 13]

SALES OF CERTAIN FOOD PRODUCTS AT WHOLESALE

A statement of the considerations involved in the issuance of this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

Maximum Price Regulation No. 237 is amended in the following respects:

1. The table in Appendix A, § 1351.518, is amended so that the dates opposite the food products, "cereals, breakfast", "rice", "sugar, cane and beet", and "vegetables, canned", under the column entitled "Last date for determining new maximum prices under this regulation" shall read "May 3, 1943" instead of "April 15, 1943" as they now read.

2. The table in Appendix A, § 1351.518, is amended so that the dates opposite the food products, "cereals, breakfast", "rice", "sugar, cane and beet", and "vegetables, canned" under the column entitled "Last date for filing new maximum prices with appropriate OPA district or State offices" shall read "May 13, 1943" instead of "April 25, 1943" as they now read.

3. The table in Appendix B, § 1351.519, is amended so that the dates opposite the food products numbers 1 to 17 inclusive under the column entitled "Last date for determining new maximum prices under this regulation" shall read "May 3, 1943" instead of "April 15, 1943" as they now read.

4. The table in Appendix B, § 1351.519, is amended so that the dates opposite the food products numbers 1 to 17 inclusive under the column entitled "Last date for filing new maximum prices with appropriate OPA district or State offices" shall read "May 13, 1943" instead of "April 25, 1943" as they now read.

This amendment shall become effective April 19, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 19th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6115; Filed, April 19, 1943; 4:39 p. m.]

*Copies may be obtained from the Office of Price Administration.

¹7 F.R. 8205, 8427, 8808, 9183, 9973, 10013, 10715; 8 F.R. 373, 569, 1200, 2106, 2671, 2946.

For purposes of this paragraph non-occupational uses shall include use of a motorboat or outboard motor for travel between a temporary or seasonal home or lodging and a fixed place of work, sightseeing, guiding pleasure parties or conducting or chartering boats for fishing parties, other than commercial fishing.

This amendment shall become effective April 24, 1943.

NOTE: All reporting and record-keeping requirements of this amendment have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(Pub. Law 671, 76th Cong.; as amended by Pub. Laws 89, 421, 507, 77th Cong.; W.P.B. Dir. No. 1, Supp. Dir. No. 1Q, 7 F.R. 562, 9121; E.O. 9125, 7 F.R. 2719)

Issued this 19th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6118; Filed, April 19, 1943; 4:40 p. m.]

PART 1394—RATIONING OF FUEL AND FUEL PRODUCTS

[RO 5C,¹ Amendment 43]

MILEAGE RATIONING, GASOLINE REGULATIONS

A rationale accompanying this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

Ration Order 5C is amended in the following respects:

1. In § 1394.7904 (a) the expression "paragraphs (b) and (c)" is amended to read "paragraphs (b), (c) and (f)".
2. Section 1394.7904 (f) is added to read as follows:

(f) Notwithstanding any other provision of Ration Order No. 5C, no ration may be issued for non-occupational use with an inboard motorboat or outboard motor normally kept or stationed in the gasoline shortage area, unless the boat is enrolled as a member of the Coast Guard Auxiliary and the application for the ration is accompanied by a written certification of such membership by an officer designated by the Coast Guard to make such certification. If the necessary certification is presented, and no ration has been issued for occupational use with such boat, the Board may allow an amount of gasoline for such non-occupational purpose not in excess of the amount determined by the formulae contained in paragraph (b) of this section.

This amendment shall become effective April 24, 1943.

NOTE: All reporting and record-keeping requirements of this amendment have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

*Copies may be obtained from the Office of Price Administration.

¹ 7 F.R. 9135, 9787, 10147, 10016, 10110, 10338, 10706, 10786, 10787, 11009, 11070; 8 F.R. 179, 274, 369, 372, 607, 565, 1028, 1202, 1203, 1365, 1282, 1366, 1318, 1588, 1813, 1895, 2098, 2213, 2288, 2353, 2431, 2595, 2720, 2780, 3096, 3201, 3253, 3254, 3255, 3315, 3616, 4189, 4341.

(Pub. Law 671, 76th Cong.; as amended by Pub. Laws 89, 421, 507, 77th Cong.; W.P.B. Dir. No. 1, Supp. Dir. No. 1Q, 7 F.R. 562, 9121; E.O. 9125, 7 F.R. 2719)

Issued this 19th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6117; Filed, April 19, 1943; 4:39 p. m.]

PART 1407—RATIONING OF FOOD AND FOOD PRODUCTS

[RO 10,¹ Amendment 11]

FOOD RATIONING REGULATIONS FOR THE VIRGIN ISLANDS

A rationale accompanying this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

Ration Order 10 is amended in the following respects:

1. Section 1407.623 is hereby revoked.
2. Section 1407.662 is hereby revoked.
3. Section 1407.704 is hereby revoked.

This amendment shall become effective April 12, 1943.

Issued this 12th day of April 1943.

WILLIAM H. DEAN,
Acting Territorial Director,
Virgin Islands.

[F. R. Doc. 43-6113; Filed, April 19, 1943; 4:39 p. m.]

PART 1499—COMMODITIES AND SERVICES

[Amendment 1 to Order 38 Under Supp. Reg. 15 of GMPR]

KANE TRANSFER CO.

Amendment No. 1 to Order No. 38, under § 1499.75 (a) (3) of Supplementary Regulation No. 15 of the General Maximum Price Regulation; Docket No. GF3-1549.

An opinion accompanying this amendment has been issued simultaneously herewith and has been filed with the Division of the Federal Register.

Section 1499.1338 is amended to read as set forth below:

§ 1499.1338 *Adjustment of maximum prices for contract carrier services sold by Kane Transfer Company.* (a) Kane Transfer Company, 2116 Fifth Street, N. E., Washington, D. C. may sell and furnish contract carrier services to Proctor & Gamble Distributing Co. from, to and between points in the states of Maryland and Virginia and the District of Columbia at prices not higher than 6% above the March 1942 levels as set forth in Exhibit 3 and Exhibit 4 in the application for adjustment of Kane Transfer Company.

¹ 7 F.R. 6887, 8523, 8607, 10707; 8 F.R. 1394, 8315.

(b) All requests of the application not granted herein are denied.

(c) This Amendment No. 1 to Order No. 38 may be revoked or amended by the Price Administrator at any time.

(d) This Amendment No. 1 to Order No. 38 (§ 1499.1338) is hereby incorporated as a section of Supplementary Regulation No. 14, which contains modifications of maximum prices established by § 1499.2.

(e) This Amendment No. 1 to Order No. 38 (§ 1499.1338) shall become effective April 21, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6147; Filed, April 20, 1943; 10:28 a. m.]

PART 1499—COMMODITIES AND SERVICES

[Order 231 Under § 1490.18 (b) of GMPR]

MANCUSO BARREL AND BOX COMPANY

For the reasons set forth in an opinion issued simultaneously herewith, *It is ordered:*

§ 1499.1831 *Adjustment of maximum price for slack wooden barrels manufactured and sold by Mancuso Barrel and Box Company.* (a) The maximum price for slack wooden barrels, made of No. 2 28½" staves, 2 heads, and 2 elm hoops, manufactured and sold by Mancuso Barrel and Box Company shall be 90 cents per barrel, f. o. b. factory.

(b) This order may be amended or revoked by the Price Administrator at any time.

(c) This Order No. 231 (§ 1499.1831) is hereby incorporated as a section of Supplementary Regulation No. 14, which contains modifications of maximum prices established by § 1499.2.

This order shall become effective April 21, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6148; Filed, April 20, 1943; 10:28 a. m.]

PART 1499—COMMODITIES AND SERVICES

[Order 232 Under § 1499.18 (b) of GMPR]

PEYRONNIN COOPERAGE COMPANY, INC.

For the reasons set forth in an opinion issued simultaneously herewith, *It is ordered:*

§ 1499.1832 *Adjustment of maximum price for slack barrels manufactured and sold by Peyronnin Cooperage Company, Inc.* (a) The maximum price for slack barrels 19½" x 28½" manufactured and sold by Peyronnin Cooperage Company, Inc., shall be 90 cents per barrel, f. o. b. factory.

(b) This order may be amended or revoked by the Price Administrator at any time.

(c) This Order No. 232 (§ 1499.1832) is hereby incorporated as a section of Supplementary Regulation No. 14, which contains modifications of maximum prices established by § 1499.2.

This order shall become effective April 21, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6149; Filed, April 20, 1943;
10:28 a. m.]

PART 1499—COMMODITIES AND SERVICES

[Order 233 Under § 1499.18 (b) of GMPR]

JOS. GARNEAU CO.

For the reasons set forth in an opinion issued simultaneously herewith, *It is ordered:*

§ 1499.1833 Denial of application of The Jos. Garneau Company for adjustment of maximum prices for Veuve Clicquot Ponsardin French champagne. (a) The application of The Jos. Garneau Company, 1819 Broadway, New York, New York, filed June 26, 1942 and assigned Docket No. GF3-418, requesting permission to increase maximum prices for Veuve Clicquot Ponsardin French champagne sold by it is denied.

This Order No. 233 shall become effective April 21, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6144; Filed, April 20, 1943;
10:29 a. m.]

PART 1499—COMMODITIES AND SERVICES

[Order 48 Under Supp. Reg. 15 of GMPR]

RAY EVERITT

Order No. 48 Under § 1499.75 (a) (3) of Supplementary Regulation No. 15 of the General Maximum Price Regulation; Docket No. GF3-2285.

For the reasons set forth in an opinion issued simultaneously herewith, *It is ordered:*

§ 1499.1348 Adjustment of maximum prices for contract carrier services sold by Ray Everitt. (a) Ray Everitt of Fables Flats, Stroudsburg, Pennsylvania, may sell and deliver contract carrier services to the Montgomery Ward & Company retail store in Stroudsburg, Pennsylvania, at a rate not to exceed \$1.60 per hour.

(b) All requests of the application not granted herein are denied.

(c) This Order No. 48 may be revoked or amended by the Price Administrator at any time.

(d) This Order No. 48 (§ 1499.1348) is hereby incorporated as a section of Supplementary Regulation No. 14, which contains modifications of maximum prices established by § 1499.2.

(e) This Order No. 48 (§ 1499.1348) shall become effective April 21, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6142; Filed, April 20, 1943;
10:29 a. m.]

Emergency Price Control Act of 1942, as amended, and Executive Order 9250; *It is ordered:*

§ 1499.1896 Approval of maximum price for 58-60 gallon paraffin lined tight oak barrels. (a) On and after April 21, 1943, Louisville Cooperage Company of Louisville, Kentucky, may sell and deliver to any person and any person may buy and receive from the Louisville Cooperage Company 58-60 gallon paraffin lined tight oak barrels with 6 hoops at a price not to exceed \$4.25 each, f. o. b. factory.

(b) This Order No. 409 may be revoked or amended at any time.

The effective date of this Order shall be April 21, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6143; Filed, April 20, 1943;
10:29 a. m.]

PART 1499—COMMODITIES AND SERVICES

[Order 410 Under § 1499.3 (b) of GMPR]

CAMPBELL SOUP CO.

For the reasons set forth in an opinion issued simultaneously herewith, *It is ordered:*

§ 1499.1897 Authorization of maximum prices for sales of Franco-American Dehydrated Pre-cooked Beans in Sauce in 6½ ounce packages by Campbell Soup Company, by wholesalers and by retailers. (a) On and after April 21, 1943, the maximum price for sales by Campbell Soup Company, having its principal office in Camden, New Jersey, of Franco-American Dehydrated pre-cooked beans in sauce delivered to purchasers' stations shall be \$1.35 per dozen 6½ ounce packages, packed 48 to the case.

(b) Campbell Soup Company and sellers at wholesale shall apply to their maximum selling prices for Franco-American Dehydrated Pre-Cooked Beans in Sauce the same discounts, allowances and price differentials which they customarily apply to sales of comparable items, unless a change in these customary discounts, allowances and price differentials results in lower selling prices.

(c) Wholesalers and retailers shall determine their maximum selling prices for Franco-American Dehydrated Pre-Cooked Beans in Sauce by the applicable Office of Price Administration regulations.

(d) This Order No. 410 may be revoked or amended by the Price Administrator at any time.

(e) This Order No. 410 (§ 1499.1897) shall become effective April 21, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6145; Filed, April 20, 1943;
10:28 a. m.]

PART 1499—COMMODITIES AND SERVICES
[Order 411 Under § 1499.3 (b) of GMPR]

H. J. HEINZ CO.

For the reasons set forth in an opinion issued simultaneously herewith, *It is ordered:*

§ 1499.1-98 *Authorization of maximum prices for sales of Heinz Frozen Cooked Spaghetti with Tomato Sauce, Heinz Dehydrated Chicken Noodle Soup, and Heinz Pre-cooked Dehydrated Chili Beans and Dehydrated Sauce, by H. J. Heinz Company and by retailers—(a) Heinz Frozen Cooked Spaghetti with Tomato Sauce, 17½ ounce package packed 1 dozen to the case—(1) Sales by H. J. Heinz Company.* On and after April 21, 1943, the maximum prices for sales by H. J. Heinz Company, having its principal place of business at Pittsburgh, Pennsylvania, of Heinz Frozen Cooked Spaghetti with Tomato Sauce delivered to retailers or f. o. b. Heinz warehouses according to Heinz' established custom shall be:

\$1.85 per dozen Zone No. 1
\$1.93 per dozen Zone No. 2.
\$2.02 per dozen Zone No. 3.
\$1.98 per dozen Zone No. 4.
\$2.06 per dozen Zone Nos. 5, 6, 7.

(2) *Sales by retailers.* Retailers shall determine their maximum prices for Heinz Frozen Cooked Spaghetti with Tomato Sauce by the appropriate Office of Price Administration regulation.

(b) *Heinz Dehydrated Chicken Noodle Soup, 2 ounce packaged packed 2 dozen to the case—(1) Sales by H. J. Heinz Company.* On and after April 21, 1943, the maximum prices for sales by H. J. Heinz Company of Heinz Dehydrated Chicken Noodle Soup delivered to retailers or f. o. b. Heinz warehouses according to Heinz established custom shall be:

\$1.70 per dozen in Zone No. 1.
\$1.71 per dozen in Zone Nos. 2, 3, 4.
\$1.78 per dozen in Zone Nos. 5, 6, 7.

(2) *Sales by retailers.* Retailers shall determine their maximum selling prices for Heinz Dehydrated Chicken Noodle Soup in 2 ounce packages by the appropriate Office of Price Administration regulation.

(c) *Heinz Pre-cooked Dehydrated Chili Beans and Dehydrated Sauce, 20 ounce package packed 1 dozen to the case—(1) Sales by H. J. Heinz Company.* On and after April 21, 1943, the maximum prices for sales by H. J. Heinz Company of Heinz Pre-Cooked Dehydrated Chili Beans and Dehydrated Sauce delivered to retailers or f. o. b. Heinz warehouses according to Heinz established custom shall be:

\$5.58 per dozen in Zone No. 1.
\$5.67 per dozen in Zone No. 2.
\$5.69 per dozen in Zone No. 3.
\$5.82 per dozen in Zone No. 4.
\$6.03 per dozen in Zone No. 5.
\$6.16 per dozen in Zone Nos. 6, 7.

(2) *Sales by retailers.* Retailers shall determine their maximum selling prices for Heinz Pre-Cooked Dehydrated Chili Beans and Dehydrated Sauce in 20 ounce packages by the appropriate Office of Price Administration regulation.

(d) H. J. Heinz Company shall give the same discounts and other allowances which it gives on other comparable items handled by it when making sales of the items priced by this order, unless a change in any of these discounts results in a lower selling price.

(e) This Order No. 411 may be revoked or amended at any time by the Price Administrator.

(f) This Order No. 411 (§ 1499.1898) shall become effective April 21, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 20th day of April 1943.

PRENTISS M. BROWN.
Administrator.

[F. R. Doc. 43-6146; Filed, April 20, 1943;
10:28 a. m.]

This order shall be effective until and including July 1, 1943 only.

[SEAL] HERBERT E. GASTON,
Acting Secretary of the Treasury.

[F. R. Doc. 43-6167; Filed, April 20, 1943;
11:34 a. m.]

TITLE 49—TRANSPORTATION AND RAILROADS

Chapter I—Interstate Commerce Commission

[Service Order 104, Amendment 1]

PART 95—CAR SERVICE

SUBSTITUTION OF REFRIGERATOR CARS

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 19th day of April, A. D. 1943.

Upon further consideration of the provisions of Service Order No. 104, and upon request of shippers and carriers for extension of the territory in which empty refrigerator cars may be furnished in lieu of box cars, an emergency exists which, in the opinion of the Commission, requires immediate action to prevent shortage of railroad equipment, empty mileage of box cars, and congestion of traffic; *It is ordered, That:*

Section 95.304 *Substitution of refrigerator cars* is hereby amended by adding the following paragraphs:

(d) On and after 12:01 a. m. April 29, 1943, and until further order of this Commission, common carriers by railroad subject to the Interstate Commerce Act transporting westbound shipments, in carloads, originating in the state of Utah and destined to points in Nevada and California, may, at their option, furnish and transport not more than three refrigerator cars of Pacific Fruit Express or Santa Fe Refrigerator Despatch ownership in lieu of each box car ordered, subject to the carload minimum weight which would have applied if the shipment had been loaded in a box car. (See note.)

NOTE: This provision does not apply on shipments on which the carload minimum weight varies with the size of the car.

(e) The operation of all rules, regulations, and tariff provisions, including

Tariffs issued by—	Tariff No.	ICC No.	Item or rule	Suppl. No.
Agent J. P. Haynes.....	1-Q (Exceptions).....	1346	1 157	36
Agent J. P. Haynes.....	2-C (Exceptions).....	1278	1 110	37
Agent J. P. Haynes.....	51-L (Class).....	1271	365	100
Agent J. P. Haynes.....	52-F (Class & Com.).....	1360	1247	55
Agent J. P. Haynes.....	216 (Class).....	1067	375	71
Agent J. P. Haynes.....	260-A (Commodity).....	1245	870	(2)
Agent J. P. Haynes.....	250 (Salt).....	1305	395	56

¹ Rule number.

² Original.

or reissues thereof, and all other tariff provisions, insofar as they are inconsistent with this order, are hereby suspended.

(f) The provisions of Service Order No. 68, as amended, and all other orders of the Commission, insofar as they con-

flict with the provisions of this order, as amended, are hereby suspended (40 Stat. 101, sec. 402, 41 Stat. 476, sec. 4, 54 Stat. 901; 49 U.S.C. 1 (10)-(17)).

It is further ordered, That copies of this order and direction be served on the Association of American Railroads,

Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement, and that notice of this order be given to the general public by depositing a copy of it in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register, The National Archives.

By the Commission.

[SEAL]

W. P. BARTEL,
Secretary.

[F. R. Doc. 43-6160; Filed, April 20, 1943;
11:22 a. m.]

Notices

DEPARTMENT OF THE INTERIOR.

Bituminous Coal Division.

[Docket No. B-356]

BLACK DIAMOND COAL MINING CO.

NOTICE OF FILING OF APPLICATION

In the matter of W. W. Bridges, Receiver, Black Diamond Coal Mining Company, Code Member.

Notice of filing of application for disposition of compliance proceeding without formal hearing pursuant to § 301.132 of the Rules of Practice and Procedure before the Bituminous Coal Division.

Notice is hereby given that an application dated March 9, 1943 for disposition of the above entitled matter without formal hearing, was filed with the Bituminous Coal Division (the "Division") on March 12, 1943, pursuant to § 301.132 of the Rules of Practice and Procedure before the Bituminous Coal Division by W. W. Bridges, Receiver, Black Diamond Coal Mining Company, the above named Code Member (the "Code Member").

Said W. W. Bridges, as Receiver of the Black Diamond Coal Mining Company, was duly authorized and directed by order dated March 16, 1943 entered by the court having jurisdiction thereof to execute and file said application with the Division and to do all things necessary to fully execute and carry out the agreements in said application.

The application was filed with respect to a written complaint dated December 11, 1942 and filed with the Division on December 15, 1942, pursuant to the provisions of section 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937 (the "Act") by the Bituminous Coal Producers Board for District No. 9, complainant, alleging that the above-named Code Member had wilfully violated the Act, the Bituminous Coal Code (the "Code") and rules and regulations thereunder, as more fully set forth in the said complaint.

In said application the Code Member:

1. Admits that it is a Code Member operating the Black Diamond No. 2 Mine, Mine Index No. 6 and the Black Diamond No. 3 Mine, Mine Index No. 7, located in Muhlenberg County, Kentucky in District No. 9.

2. Admits that it wilfully violated section 4 II (e) and section 4 II (i) 6 of the

Act, Part II (e) and Part II (i) 6 of the Code and Rule 6 of section XIII of the Marketing Rules and Regulations by selling and delivering during the period October 29, 1940 to April 20, 1942 coal produced by the said Code Member to the Boillin-Harrison Company, Clarksville, Tennessee, a wholesale grocer, for resale and delivery to W. E. Beach Coal Company, Clarksville, Tennessee, a retail coal dealer, a total of 4819.15 tons of various sizes of coal and allowing to the said Boillin-Harrison Company rebates, credits or unearned discounts from the invoice prices of said coal in amounts ranging from 5 cents to 25 cents per ton, thereby reducing the sales prices of said coal below the effective minimum prices therefor.

3. Admits that it wilfully violated section 4 II (e) and section 4 II (i) 6 of the Act, Part II (e) and Part II (i) 6 of the Code and Rule 1 (F) of section VII and Rule 6 of section XIII of the Marketing Rules and Regulations by failing to receive payment for the coal referred to in paragraph 2 above in United States currency or funds equivalent thereto, payment for said coal being made to the Code Member in the form of groceries or other staple articles.

4. Admits that it wilfully violated section 4 II (e) of the Act and Part II (e) of the Code and Rule 1 of section X of the Marketing Rules and Regulations by granting allowances ranging from 20 cents to 35 cents per ton from the invoice prices for alleged substandard preparation or quality on a total tonnage of 254.75 tons of coal of various sizes, sold on or about June 28, 1941, August 13, 1941, and January 3, 1942 without filing the statement required by Rule 1 of section X of the Marketing Rules and Regulations, thereby reducing the actual sales prices below the applicable minimum prices for said coal.

5. Admits that it wilfully violated section 4 II (i) 8 of the Act, Part II (i) 8 of the Code, Rule 8 of section XIII and Rule 2 of section XII of the Marketing Rules and Regulations by intentionally misrepresenting on invoices the sizes of a total of approximately 18,842.35 tons of coal produced by the Code Member and sold to various purchasers during the period October 25, 1940 through March 31, 1941 inclusive.

6. Admits that it wilfully violated section 4 II (e) of the Act, Part II (e) of the Code and Rule 1 (e) of section XI of the Marketing Rules and Regulations by unlawfully substituting during the period July 26, 1941 to July 30, 1941 both dates inclusive, a total tonnage of 430.7 tons of 6" lump coal produced by the Code Member on orders for 3" lump coal from the Forest Products Chemical Company, with the result that the coal actually delivered to the said purchaser was sold at prices less than the applicable minimum prices therefor.

7. Admits that it wilfully violated Rule 4 (A) and Rule 9 (a) of section II of the Marketing Rules and Regulations by paying to Southwestern Fuel Company, Memphis, Tennessee unauthorized sales agency commissions ranging from 5 cents to 18.31 cents per ton for sales during the period October 12, 1940 to

June 23, 1941 inclusive, by Southwestern Fuel Company on behalf of the said Code Member of approximately 7,410.85 tons of coal produced by the Code Member, whereas neither the Code Member nor the Southwestern Fuel Company had filed with the Division a copy of the contract of agency executed on September 13, 1938.

8. Consents with respect to the foregoing admitted violations referred to in paragraph 2 hereof to the entry of an order revoking and cancelling its Code Membership.

9. Consents with respect to the foregoing admitted violations referred to in paragraphs 3 through 7, inclusive hereof, to the entry of an order directing the Code Member to cease and desist from violations of the Code and regulations thereunder, which order will continue in full force and effect upon any restoration of Code Membership.

10. Agrees with respect to the foregoing admitted violations referred to in paragraph 2 hereof to pay a tax in the amount of \$2,411.09 as a condition precedent to restoration to membership in the Code.

11. Agrees to execute any and all documents necessary to dispose of this proceeding in the event this application is granted.

12. Represents that to the best of its knowledge and belief it has not committed any other violations of the Act, the Code, or regulations thereunder, other than the foregoing admitted violations.

13. Represents in extenuation of the foregoing admitted violations that the practices were long established for many years and were not carried on with any intent to violate the minimum price provisions of the Act.

All interested parties may, if they so desire, file with the Division, recommendations or requests for informal conferences with respect to said application within fifteen (15) days from the date of publication of this notice.

Dated: April 15, 1943.

[SEAL]

DAN H. WHEELER,
Director.

[F. R. Doc. 43-6083; Filed, Apr. 19, 1943;
10:33 a. m.]

[Docket No. B-301]

CLAUDE E. TAYLOR

MEMORANDUM OPINION AND ORDER TO CEASE AND DESIST

On February 3, 1943, after notice of hearing, Edward J. Hayes, a duly designated Examiner of the Division submitted a report in which he found that code member, Claude E. Taylor, operating the Taylor Mine, Mine Index No. 1556, located in Bell County, Kentucky, in District 8, had wilfully violated the Order in General Docket No. 19, dated October 9, 1940, by selling for rail shipment approximately 226.4 tons of $\frac{3}{8}$ " x 0 slack, whereas minimum prices, temporary or final, had not been established for the sale of said coal for rail shipment.

The Examiner recommended that an order be entered requiring code member to cease and desist from violating the Order in General Docket No. 19, dated October 9, 1940, or from otherwise violating the Act, the Code and orders, rules and regulations issued thereunder.

Opportunity was afforded to all parties to file exceptions to the Examiner's Report. No exceptions have been filed.

I have considered the Report of the Examiner and I find that it adequately and accurately reflects the evidence disclosed in the record. Upon the basis of the Proposed Findings of Fact, Proposed Conclusions of Law and Recommendation set forth in the Report and upon the entire record of this proceeding,

It is hereby ordered, That the Proposed Findings of Fact and the Proposed Conclusions of Law of the Examiner are approved and adopted as the Findings of Fact and the Conclusions of Law of the Director.

It is further ordered, That Claude E. Taylor, a code member operating the Taylor Mine (Mine Index No. 1556) in Bell County, Kentucky, his agents, employees, representatives, heirs and assigns, and all persons acting or claiming to act on his behalf or interest, cease and desist from violating the Order in General Docket No. 19, dated October 9, 1940, or from otherwise violating the provisions of the Act, the Code or orders, rules and regulations issued thereunder.

Notice is hereby given that upon failure or refusal to comply with this order, the Division may apply to a United States Circuit Court of Appeals for the enforcement thereof, or may otherwise proceed as authorized by the Act.

Dated: April 16, 1943.

[SEAL] DAN H. WHEELER,
Director.

[F. R. Doc. 43-6079; Filed, April 19, 1943;
10:34 a. m.]

[Docket No. B-67]

PARIS MARTIN

MEMORANDUM OPINION AND ORDER TO CEASE
AND DESIST

On February 3, 1943, after notice and hearing, Edward J. Hayes, a duly designated Examiner of the Division submitted a report in which he found that code member Paris Martin, operating the Blue Gem Mine, Mine Index No. 1531, located in Bell County, Kentucky, in District 8, had wilfully violated the Order in General Docket No. 19, dated October 9, 1940, by selling for rail shipment approximately 296.05 tons of $\frac{3}{4}$ " x 0 slack, whereas minimum prices, temporary or final, had not been established for the sale of said coal for rail shipment.

The Examiner recommended that an order be entered requiring code member to cease and desist from violating the Order in General Docket No. 19, dated October 9, 1940, or from otherwise violating the Act, the Code and the orders, rules and regulations issued thereunder.

Opportunity was afforded to all parties to file exceptions to the Examiner's Report. No exceptions have been filed.

I have considered the Report of the Examiner and I find that it adequately and accurately reflects the evidence disclosed in the record. Upon the basis of the Proposed Findings of Fact, Proposed Conclusions of Law and Recommendation set forth in the Report and upon the entire record of this proceeding,

It is hereby ordered, That the Proposed Findings of Fact and the Proposed Conclusions of Law of the Examiner are approved and adopted as the Findings of Fact and the Conclusions of Law of the Director.

It is further ordered, That Paris Martin, a code member operating the Blue Gem Mine (Mine Index No. 1531) in Bell County, Kentucky, his agents, employees, representatives, heirs and assigns, and all persons acting or claiming to act on his behalf or interest, cease and desist from violating the Order in General Docket 19, dated October 9, 1940, or from otherwise violating the provisions of the Act, the Code, or orders, rules and regulations issued thereunder.

Notice is hereby given that upon failure or refusal to comply with this order, the Division may apply to a United States Circuit Court of Appeals for the enforcement thereof, or may otherwise proceed as authorized by the Act.

Dated: April 16, 1943.

[SEAL] DAN H. WHEELER,
Director.

[F. R. Doc. 43-6080; Filed, April 19, 1943;
10:34 a. m.]

[Docket Nos. A-1921 and A-1921-Part II]

DISTRICT BOARD NO. 1

MEMORANDUM OPINION AND ORDER

In the matter of the petition of District Board No. 1 for the establishment of price classifications and minimum prices for the coals of certain mines and for changes in shipping points for the coals of certain other mines in District No. 1.

In the matter of the petition of District Board No. 1 for permission to mix coals of certain mines in District No. 1.

Memorandum opinion and order severing Docket No. A-1921, Part II, from Docket No. A-1921 and granting temporary relief in Docket No. A-1921, Part II.

The original petition in the above-entitled matter filed with the Division pursuant to section 4 II (d) of the Bituminous Coal Act of 1937, prays for the establishment of temporary and permanent price classifications and minimum prices for the coals of certain mines in District No. 1, and for permission to mix coals of certain other mines also located in District No. 1. It appears, however, that no final determination should be made at this time with respect to the request for permission to mix coals produced at Mine Index No. 3960, 1023, 3762, 3763, 224 and 225 for the reason that insufficient facts have been presented upon which to base a final determination.

In view of the foregoing, it is deemed advisable at this time to grant only tem-

porarily the request of petitioner to mix coals, produced at the aforementioned mines.

It appearing that a reasonable showing of necessity has been made for the granting of temporary relief in the manner hereinafter set forth; and

No petitions of intervention having been filed with the Division in the above-entitled matter; and

The following action being deemed necessary in order to effectuate the purposes of the Act;

Now, therefore, *It is ordered* That the portion of Docket No. A-1921 relating to the request of petitioner to mix coals of Mine Index Nos. 3960, 1023, 3762, 3763, 224 and 225 be, and it hereby is, severed from the remaining part of that docket and designated as A-1921, Part II.

It is further ordered That, pending further order of the Director, temporary relief be, and the same hereby is, granted as follows: Commencing forthwith the Schedule of Effective Minimum Prices for District No. 1 for All Shipments Except Truck is supplemented to include the price classifications, minimum prices, changes in shipping points and other matter appearing in Supplement R which is annexed hereto and made a part hereof.

It is further ordered That pleadings in opposition to the original petition in the above-entitled matter and applications to stay, terminate or modify the temporary relief herein granted may be filed with the Division pursuant to the Rules and Regulations Governing Practice and Procedure before the Bituminous Coal Division in Proceedings Instituted Pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

An order scheduling a hearing to adduce facts upon which final relief in this matter may be based will be issued in due course.

Dated: April 10, 1943.

[SEAL] DAN H. WHEELER,
Director.

[F. R. Doc. 43-6086; Filed, April 10, 1943;
10:32 a. m.]

[Docket No. A-1912]

DISTRICT BOARD NO. 10

MEMORANDUM OPINION AND ORDER GRANTING
TEMPORARY RELIEF

In the matter of the petition of District Board No. 10 for the establishment of price classifications and minimum prices for the coals produced for rail shipment at certain mines in District No. 10.

On March 20, 1943, a petition was filed, pursuant to section 4 II (d) of the Bituminous Coal Act of 1937 by District Board No. 10. The District Board requested that price classifications and minimum prices be established for coals produced for rail shipment at the Bunker Hill Mine, Mine Index No. 1038, of Bunker Hill Coal & Mining Company, Collinsville Mine, Mine Index No. 1040 of Collinsville Coal Corporation, Glenn Carbon Coal Mine, Mine Index No. 1042, of Glen Carbon Coal Co., Buck Road Coal Co. Mine, Mine Index No. 1327 of Wm. H. Johnson,

Sugar Loaf Mine, Mine Index No. 1049 of Sugar Loaf Coal Corporation, Sunset Hill Mine, Mine Index No. 1051 of Sunset Hill Coal Company, and the Truck Trade Mine, Mine Index No. 1052 of the Truck Trade Coal Company, all located in District No. 10, and also requested that permission be granted these code members to commingle coals produced at the afore-named mines for rail shipment.

The District Board states that the mines herein involved, all located in the southwestern part of Madison County, Illinois, produce comparable coals in the No. 6 Seam. The District Board further states that because of the large demand for coals engendered by the war effort, the code members herein involved have asked the District Board to propose minimum prices for the rail shipment of the comparable coals when loaded into railroad cars on the Illinois Terminal Railroad at Sand Cut near Collinsville, Illinois, and for permission to commingle the coals of their respective mines so as to make possible more efficient use of railroad equipment.

A reasonable showing of necessity has been presented for the granting of temporary relief. Accordingly, I am establishing temporary price classifications and minimum prices for the coals produced at the mines herein involved, as requested by the District Board except that I have provided price exceptions for sales for railroad locomotive fuel in order that these mines shall have the same fair competitive opportunities as other rail shipping mines in the same Freight Origin Group and in the same Price Group; and have provided price adjustments to the f. o. b. mine prices herein established for coals of these mines when shipments are made to Market Area 40, which are the same adjustments as are applicable to rail shipments to Market Area 40 from Mine Index Nos. 139, 153, and 173, which are also located on the Illinois Terminal Railroad and which take the same freight rates for shipment to that Market Area as the mines herein involved. I have also determined to deny the request of the District Board that minimum prices applicable to the coals herein involved when commingled shall be the price of the coal having the highest minimum price because no justification for such method of pricing has been shown. In order, however, that some opportunity may be present for these mines to commingle their coals until such time as this matter may be more thoroughly explored the order herein provides for mixture of certain coals which bear the same minimum prices in their respective size groups.

Now, therefore, *It is ordered*, That until further order temporary relief is granted as follows: Commencing forthwith the Schedule of Effective Minimum Prices for District No. 10 for All Shipments Except Truck is supplemented to include the matters set forth in the schedule marked Supplement R annexed hereto and made a part hereof.

It is further ordered, That invoices required to be filed under appropriate orders of the Division shall be filed by the shipper of the coals herein involved:

Provided, That if a single carload is made up of coal or two or more mines, the invoice shall be prepared and filed by the person or entity in whose name the coal is shipped and shall indicate that the coals comprising such carload originated at more than one of the mines herein involved.

It is further ordered, That each producer herein concerned shall file with the Statistical Bureau for District No. 10 on or before the tenth (10th) day of each month a statement setting forth the tonnage of each size, kind and quality of coal transported or shipped to the loading ramp at Sand Cut, Illinois during the preceding month.

An order scheduling a hearing to adduce facts upon which final relief in this matter may be based will be issued in due course.

Dated: April 10, 1943.

[SEAL] DAN H. WHEELER,
Director.

[F. R. Doc. 43-6087; Filed, April 19, 1943;
10:32 a. m.]

[Docket Nos. A-1918 and A-1918, Part II]

DISTRICT BOARD NO. 9

MEMORANDUM OPINION AND ORDER

In the matter of the petition of District Board No. 9 for the establishment of price classifications and minimum prices and for other relief for the coals of certain mines.

In the matter of the petition of District Board No. 9 for the establishment of price classifications and minimum prices for Size Group 7 coals of Mine Index No. 506 for all shipments except truck.

Memorandum opinion and order severing Docket No. A-1918, part II from Docket No. A-1918 and granting temporary relief in Docket No. A-1918, part II.

The original petition in the above-entitled matter, which was filed with this Division by District Board No. 9 pursuant to section 4 II (d) of the Bituminous Coal Act of 1937, requests the establishment of temporary and permanent price classifications and minimum prices and a change of shipping points for the coals of certain mines in District No. 9, and further requests the establishment of a price of \$2.85 per net ton for Size Group 7 coals produced by Bell Mine No. 1, Mine Index No. 506, of Mid-Continent Coal & Transportation Company in District No. 9.

The petition describes the Bell No. 1 Mine as located in the Bell seam. In the Schedule of Effective Minimum Prices for District No. 9 for Truck Shipments however, this mine is described as located in the Stray Seam and is priced the same as other mines which produce coal in the Stray Seam.

The \$2.85 minimum price requested for Size Group 7 coals produced at Mine Index No. 506 for all shipments except truck is approximately \$1.00 per ton more than the minimum price established for Stray Seam coals in this size group produced at other mines in the Stray Seam for such shipments.

It appears that although a hearing will be required to adduce sufficient facts to justify the establishment of a minimum price for the coals in Size Group 7 produced at Mine Index No. 506 for all shipments except truck which is substantially higher than the minimum prices established for coals in the same size group produced at other mines in the same seam for the same type of shipments, nevertheless an adequate showing of necessity has been made for the relief hereinafter granted.

Now, therefore, *It is ordered*, That the portion of Docket No. A-1918 relating to the establishment of a minimum price of \$2.85 per net ton for the coals in Size Group 7 produced at the Bell Mine No. 1, Mine Index No. 506, of Mid-Continent Coal & Transportation Company in District No. 9 be, and it hereby is, severed from the remainder of Docket No. A-1918 and designated as Docket No. A-1918, Part II.

It is further ordered, That, pending further order, temporary relief is granted as follows: Commencing forthwith, the Schedule of Effective Minimum Prices for District No. 9 for All Shipments Except Truck is supplemented to include the price classification and minimum price set forth in the Schedule marked "Supplement R" annexed hereto and hereby made a part hereof.

An order scheduling a hearing to adduce facts upon which final relief in this matter may be based will be issued in due course.

Dated: April 9, 1943.

[SEAL] DAN H. WHEELER,
Director.

[F. R. Doc. 43-6088; Filed, April 19, 1943;
10:32 a. m.]

[Docket No. A-1595]

CARROLLTOWN COAL CO.

ORDER GRANTING REQUEST TO POSTPONE HEARING AND POSTPONING HEARING

In the matter of the petition of Carrolltown Coal Company, a corporation, for approval of its agreement with Frank B. Wood, an individual trading and doing business as F. B. Wood Coal Mining Company, to purchase the entire production of the Foxburg No. 1 Mine, Mine Index No. 1685, and other coal; for a change in shipping point, and for permission to mix coals of Mine Index Nos. 582 and 1685.

The above-entitled matter having been heretofore scheduled for hearing on April 16, 1943, at 10 o'clock in the forenoon of that day at a hearing room of the Bituminous Coal Division, Washington, D. C., by orders issued herein on February 13 and March 13, 1943; and

A request that said hearing be postponed having been filed herein by the above-named petitioner; and

The Director being of the opinion that good cause for the granting of said request has been shown, and that said hearing should be postponed;

Now, therefore, *it is ordered*, That said request be and the same hereby is granted and that said hearing be and the same

hereby is postponed from April 16, 1943, at 10 o'clock in the forenoon of that day to a date to be set by an order to be issued in due course.

It is further ordered, That said order issued herein on February 13, 1943, shall, in all other respects, remain in full force and effect.

Dated: April 15, 1943.

[SEAL] DAN H. WHEELER,
Director.

[F. R. Doc. 43-6084; Filed, April 19, 1943;
10:33 a. m.]

[Dockets Nos. A-1780, Part II, and A-1869]

DISTRICT BOARD NO. 7

ORDER POSTPONING HEARING

In the matter of the petition of District Board No. 7 for a change in the territorial boundary between Districts Nos. 7 and 8 in Nicholas County, West Virginia.

The above entitled matter having been heretofore scheduled for hearing on April 19, 1943 at 10 o'clock in the forenoon of that day, at a hearing room of the Bituminous Coal Division, Washington, D. C. by an order issued herein on March 3, 1943; and

A motion that said hearing be continued having been filed herein by the above named petitioner; and

The Director being of the opinion that good cause for the granting of said motion has been shown, and that said hearing should be postponed;

Now, therefore, it is ordered, That said motion be, and the same hereby is granted, and that said hearing be, and the same hereby is, postponed from April 19, 1943 at 10 o'clock in the forenoon of that day to a time and place to be designated in a subsequent order to be issued herein.

It is further ordered, That the order issued herein on March 3, 1943 shall, in all other respects, remain in full force and effect.

Dated: April 16, 1943.

[SEAL] DAN H. WHEELER,
Director.

[F. R. Doc. 43-6078; Filed, April 19, 1943;
10:34 a. m.]

[Docket No. A-1929]

DISTRICT BOARD NO. 10

ORDER GRANTING TEMPORARY RELIEF

In the matter of the petition District Board No. 10 for establishment of price classifications and minimum prices for Mine Index No. 997.

An original petition, pursuant to section 4 II (d) of the Bituminous Coal Act of 1937, was duly filed with this Division by the above-named party, requesting the establishment, both temporary and permanent, of price classifications and minimum prices for the coals of Lete and Son Mine, Mine Index No. 997 of Lete Coal, Inc. Although this petition did not set forth sufficient facts upon which permanent relief may be based, it appears that there is reasonable necessity for the

granting of temporary relief in the manner hereinafter set forth.

No petitions of intervention having been filed with the Division in the above-entitled matter; and

The following action being deemed necessary in order to effectuate the purposes of the Act;

It is ordered, That, pending final disposition of the above-entitled matter, temporary relief is granted as follows: Commencing forthwith, the Schedule of Effective Minimum Prices for District No. 10 for All Shipments Except Truck is amended to include the price classifications and minimum prices set forth in the schedule marked Supplement R annexed hereto and made a part hereof.¹

It is further ordered, That pleadings in opposition to the original petition in the above-entitled matter and applications to stay, terminate or modify the temporary relief herein granted may be filed with the Division pursuant to the rules and regulations governing practice and procedure before the Bituminous Coal Division in proceedings instituted pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

The original petition in this matter requests that no exceptions be allowed with respect to locomotive fuel sold to off-line railroads. Nevertheless, since Railroad Locomotive Fuel Price Exception 1-A on page 45 of Price Schedule No. 1, District No. 10 for All Shipments Except Truck is applicable to the coals of all other mines in Price Groups 14 and 15 of District No. 10 for which minimum prices have been established for all shipments except truck, and since adequate reason has not been advanced for denying the application of this Price Exception to the coals of Mine Index No. 997, the relief granted affords the producer here involved the same competitive opportunity available to all other producers similarly situated by making the said Price Exception applicable to the coals of its mine, Mine Index No. 997.

An order scheduling a hearing to adduce facts upon which final relief in this matter may be based will be issued in due course.

Dated: April 15, 1943.

[SEAL] DAN H. WHEELER,
Director.

[F. R. Doc. 43-6090; Filed, April 19, 1943;
10:33 a. m.]

[Docket No. A-1932]

MORRISDALE COAL CO.

MEMORANDUM OPINION AND ORDER GRANTING TEMPORARY RELIEF

In the matter of the petition of Morrisdale Coal Company for permission to mix coals of certain mines in District No. 1.

An original petition pursuant to section 4 II (d) of the Bituminous Coal Act of 1937, was duly filed with this Division by the above-named party, requesting permission to mix coals produced from the Sotok & Campbell Mine, operated by

¹ Not filed with the Division of the Federal Register.

Mike Sotok and Alex Campbell, a co-partnership doing business as Sotok & Campbell, Mine Index No. 988, for shipment by rail over either the tipple of the Morrisdale No. 4 Mine operated by the Morrisdale Coal Company, Mine Index No. 212, or the tipple of the Maxton Slope Mine, Mine Index No. 722, also operated by the Morrisdale Coal Company, at Hawk Run, Pennsylvania, on the New York Central Railroad.

No petitions of intervention have been filed in this matter.

On the basis of the original petition filed herein, the Director is of the opinion that temporary relief, as hereinafter set forth, may be granted petitioner, pending further order of the Director, but no final determination should be made at this time with respect to the request for permission to mix coals produced at Mine Index Nos. 212, 722 and 988.

Now, therefore, it is ordered, That pending further order of the Director, temporary relief be, and the same hereby is, granted, as follows: Commencing forthwith, the Schedule of Effective Minimum Prices for District No. 1 For All Shipments Except Truck is supplemented to include the price classifications and minimum prices and other matter appearing in Supplement R which is annexed hereto and made a part hereof.¹

It is further ordered, That pleadings in opposition to the original petition in the above-entitled matter and applications to stay, terminate or modify the temporary relief herein granted may be filed with the Division pursuant to the rules and regulations governing practice and procedure before the Bituminous Coal Division in proceedings instituted pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

An order scheduling a hearing to adduce facts on which final relief in this matter may be based will be issued in due course.

Dated: April 13, 1943.

[SEAL] DAN H. WHEELER,
Director.

[F. R. Doc. 43-6089; Filed, April 19, 1943;
10:33 a. m.]

[Docket No. B-267]

R. & W. COAL CO.

MEMORANDUM OPINION AND ORDER REVOKING CODE MEMBERSHIP

In the matter of G. H. Ware and C. M. Reese, individually and as copartners, doing business under the name and style of R. & W. Coal Company, Code Members.

On October 6, 1942, after due notice and hearing Charles S. Mitchell, a duly designated Examiner of the Division, submitted a report in which he found that code members G. H. Ware and C. M. Reese, individually and as copartners doing business under the name and style of R. & W. Coal Company, operating the R. & W. Mine, Mine Index No. 1080, located in Vinton County, Ohio, in Sub-district 7 of District 4 wilfully violated:

(a) Section 4 II (e) of the Act and the corresponding section of the Bituminous Coal Code, by the sale, during the period from October 1, 1940 to December 31, 1941, of 625.35 net tons of coal classified as Size Group 5, for \$2.25 per net ton f. o. b. the mine, whereas the effective minimum price was \$2.45; and

(b) Sections 4 II (e) and (g) of the Act and corresponding sections of the Code, by the sale, during the same period, of 6,771.05 net tons of Size Group 6 coal at delivered prices ranging from \$1.85 to \$2.30, being less than the effective minimum price of \$1.95 plus the cost of transportation.

The Examiner recommended that an order be entered revoking and cancelling the code membership of G. H. Ware and C. M. Reese, and providing that prior to reinstatement in the Code, they shall pay to the United States a tax in the amount of \$6,831.44.

Opportunity was afforded to all parties to file exceptions to the Examiner's report. No exceptions have been filed.

I have considered the report of the Examiner and I find that it adequately and accurately reflects the evidence disclosed in the record. Upon the basis of the proposed findings of fact, proposed conclusions of law and recommendation set forth in the report and upon the entire record in this proceeding,

It is hereby ordered, That the proposed findings of fact and the proposed conclusions of law of the Examiner are approved and adopted as the findings of fact and conclusions of law of the Director.

It is further ordered, That the code membership of G. H. Ware and C. M. Reese, individually and as copartners doing business under the name and style of R. & W. Coal Company, operating the R. & W. Mine, Mine Index No. 1080, located in Vinton County, Ohio, in Subdistrict 7 of District 4, be and it hereby is revoked and cancelled.

It is further ordered, That prior to reinstatement to membership in the Code the said G. H. Ware and C. M. Reese, or either or both of them shall pay to the United States a tax in the amount of \$6,831.44, as provided in section 5 (c) of the Act.

Dated: April 16, 1943.

[SEAL] DAN H. WHEELER,
Director.

[F. R. Doc. 43-6081; Filed, April 19, 1943;
10:34 a. m.]

[Docket No. B-268]

GOULD ROAD COAL CO.

MEMORANDUM OPINION AND ORDER REVOKING
CODE MEMBERSHIP

In the matter of Andrew Pipo, doing business under the name and style of Gould Road Coal Company, Code Member.

On September 26, 1942, after notice and hearing, Charles S. Mitchell, a duly designated Examiner of the Division, submitted a report in which he found that code member Andrew Pipo, doing business under the name and style of Gould Road Coal Company, operating

the Gould Road Mine (Mine Index No. 652), in Jefferson County, Ohio, in District 4, willfully violated sections 4 II (e) and (g) of the Bituminous Coal Act of 1937, the corresponding sections of the Bituminous Coal Code and Price Instruction No. 6, as amended, of the Schedule of Effective Minimum Prices for District No. 4 for Truck Shipments by selling from December 16, 1940 to May 31, 1941, inclusive, 799.84 tons of 1 1/4" x 0 coal, produced at his Gould Road Mine, at a price of \$2.00 per net ton delivered to a point 6.3 miles from the mine, whereas the effective minimum price for such coal was \$2.00 per net ton f. o. b. the mine plus the actual costs of transporting and handling the coal costs of not less than 20 cents per ton. The Examiner recommended that the code membership of Andrew Pipo be revoked and cancelled and that prior to the restoration of such code membership, he pay a tax to the United States in the amount of \$623.88.

Opportunity was afforded to all parties to file exceptions to the Examiner's report but no exceptions have been filed.

I have considered the report of the Examiner and I find that it adequately and accurately reflects the evidence disclosed in the record.¹ Upon the basis of the proposed findings of fact, proposed conclusions of law and recommendation set forth in the Report, and upon the entire record in this proceeding,

It is hereby ordered, That the proposed findings of fact and the proposed conclusions of law of the Examiner are approved and adopted as the findings of fact and conclusions of law of the Director;

It is further ordered, That, effective fifteen (15) days from the date hereof, the code membership of Andrew Pipo, doing business under the name and style of Gould Road Coal Company, operating the Gould Road Mine (Mine Index No. 652), in Jefferson County, Ohio, in District 4, is cancelled and revoked, and that prior to any reinstatement to membership in the Code he pay to the United States a tax in the amount of \$623.88, as provided in section 5 (c) of the Act.

Dated: April 16, 1943.

[SEAL] DAN H. WHEELER,
Director.

[F. R. Doc. 43-6082; Filed, April 19, 1943;
10:34 a. m.]

¹ Code member suggested at the hearing that he had not sold the coal as alleged in the complaint but had given it outright to his son who in turn had disposed of the coal to the purchaser, McCauslen Florists. The Examiner found that in view of the language of section 4 II (e), the sale, delivery or offering for sale of coal at less than established minimum prices is prohibited and that it was accordingly unnecessary to determine whether code member in fact sold the coal as alleged in the complaint or had violated section 4 II (e) by giving it away. No objection has been made to this disposition of the question and I agree that the Examiner's treatment was proper. Without detailing the evidence, however, my own consideration of the record leads me to reject the hypothesis that the coal was given to code member's son; in my view there is substantial evidence to support the conclusion that code member himself sold the coal and that at most his son was acting as his agent in such sale.

CARGILL COAL AND EQUIPMENT CO.

APPLICATION FOR REGISTRATION AS DISTRIBUTOR

An application for registration as a distributor has been filed by the following and is under consideration by the Director:

Name and Address	Date application filed
E. L. Weisbecker (Cargill Coal and Equipment Co.), La Crosse, Wis.	Mar. 29, 1943

Any district board, code member, distributor, the Consumers' Counsel, or any other interested person, who has pertinent information concerning the eligibility of the above-named applicant for registration as a distributor under the provisions of the Bituminous Coal Act and the Rules and Regulations for the Registration of Distributors, is invited to furnish such information to the Division on or before May 17, 1943. This information should be mailed or presented to the Bituminous Coal Division, Department of the Interior, Washington, D. C.

Dated: April 15, 1943.

[SEAL] DAN H. WHEELER,
Director.

[F. R. Doc. 43-6085; Filed, April 19, 1943;
10:32 a. m.]

DEPARTMENT OF LABOR.

Children's Bureau.

CHILD LABOR REGULATION

EMPLOYMENT OF MINORS BETWEEN 14 AND 16

Notice of hearing on proposed amendment to Child Labor Regulation No. 3 issued under the Fair Labor Standards Act of 1938.

Whereas the employment of minors under the age of 16 years in any occupation constitutes oppressive child labor within the meaning of section 3 (1) of the Fair Labor Standards Act of 1938, excepting that the Chief of the Children's Bureau may provide by regulation or order that the employment of minors between the ages of 14 and 16 years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor, if and to the extent that he has determined that such employment is confined to periods which will not interfere with their schooling or with their health or well-being, and

Whereas the Chief of the Children's Bureau, pursuant to section 3 (1) of the Act, issued Child Labor Regulation No. 3 (4 F.R. 1983, Code of Federal Regulations 1939 Supp., Ti. 29, Ch. IV, Part 441), effective May 24, 1939, providing that the employment of minors between the ages of 14 and 16 years in certain occupations under specified conditions shall not be deemed to constitute oppressive child labor, and

Whereas a petition has been received from operators of fruit and vegetable packing sheds in the State of Mississippi requesting authority to employ minors between 14 and 16 years of age after

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7 p. m. and for more than 40 but not more than 48 hours in any one week when school is not in session (periods of employment outside the scope of Child Labor Regulation No. 3) during a period of not more than 10 weeks in any one year, and

Whereas the question raised by said petition appears to be a question of interest to the entire fruit and vegetable packing industry, and

Whereas the Chief of the Children's Bureau is of the opinion that it is desirable to hold a public hearing on the question whether Child Labor Regulation No. 3 should be amended to provide that the employment of minors between the ages of 14 and 16 years during periods and under conditions in which such employment now constitutes oppressive child labor shall not be deemed to be oppressive child labor,

Now, therefore, notice is hereby given that:

I. A public hearing will be held at 10 a. m. Monday, May 3, 1943, at Assembly Room 516, United States Customs and Courthouse, Twelfth and Market Streets, St. Louis, Missouri, before Julius Schlesinger or any other presiding officer designated by me for the purpose of taking testimony on the following questions:

1. During what periods, if any, and under what conditions is the employment of minors between the ages of 14 and 16 years in the fruit and vegetable packing industry necessary for the war effort, and

2. If such employment of minors between the ages of 14 and 16 years is found to be necessary for the war effort, what safeguards should be established to protect their schooling and their health and well-being?

II. Any interested person may appear at the hearing to offer evidence either on his own behalf or on behalf of any other person if, not later than May 1, 1943, he files with Mr. Earl V. Powers, Branch Manager, by mail or otherwise, at the office of the United States Department of Labor, 316 Old Customs House, St. Louis, Missouri, a notice of his intent to appear, which shall contain the following information:

1. The name and address of the person appearing;

2. If such person is appearing in a representative capacity, the name and address of the person or persons he is representing.

III. Any interested person may secure further information concerning the aforesaid hearing by inquiry directed to the Chief of the Children's Bureau, United States Department of Labor, Washington, D. C., or to Mr. Earl V. Powers, Branch Manager, United States Department of Labor, 316 Old Customs House, St. Louis, Missouri.

IV. The hearing will be conducted in accordance with the following rules of procedure subject to such subsequent modification by the Chief of the Children's Bureau or the presiding officer as may be deemed appropriate:

1. The hearing shall be stenographically reported and a transcript made

which shall be available at prescribed rates to any person upon request made to the official reporter of the Children's Bureau, United States Department of Labor, Washington, D. C.

2. At the discretion of the presiding officer, the hearing will be continued from day to day or adjourned to a later day or to a different place by announcement thereof at the hearing by the presiding officer or by other appropriate notice.

3. At any stage of the hearing, the presiding officer may call for further evidence upon any matter. After the presiding officer has closed the hearing before him, no further evidence shall be taken except at the request of the Chief of the Children's Bureau unless provision has been made at the hearing for the later receipt of such evidence.

V. On the close of the hearing, the presiding officer shall forthwith file a complete record of the proceedings with the Chief of the Children's Bureau.

VI. No amendment to Child Labor Regulation No. 3 issued as a result of the hearing will take effect until after due notice is given of the issuance thereof by publication in the FEDERAL REGISTER.

Signed at Washington, D. C., this 20th day of April 1943.

KATHARINE F. LENROOT,
Chief of the Children's Bureau.

[F. R. Doc. 43-6151; Filed, April 20, 1943;
11:09 a. m.]

OFFICE OF ALIEN PROPERTY CUSTODIAN.

[Divesting Order 1]

CISATLANTIC CORP. AND CISOCLEANIC CORP.

Re: All of the capital stock of Cisatlantic Corporation and of Cisocleanic Corporation.

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation:

1. Having on July 2, 1942, for reasons and under conditions and circumstances at that time existing which made such action then advisable, vested, pursuant to Vesting Order Number 46, as property of nationals of a foreign country, among other things, all of the capital stock of Cisatlantic Corporation and of Cisocleanic Corporation;

2. Having thereafter received (a) a notice executed by Edgar Ausnit on Form APC-1 claiming an interest in said capital stock and asserting a claim arising as a result of the aforesaid vesting order, and (b) a written waiver by said Edgar Ausnit of "any claim or right granted by" those certain "Regulations Relating To Property Vested In The Alien Property Custodian" theretofore prescribed and issued by the undersigned and published in 7 Fed. Reg. 2290 (March 26, 1942);

3. Finding, as a result of further investigation conducted subsequent to July 2, 1942, that all of the aforesaid capital stock was on July 2, 1942 owned by said Edgar Ausnit; that said Edgar Ausnit was at that time and at all times since then has been and now is a citizen of Cuba, a resident of the United States, not in any manner detained, and not acting or purporting to act directly or in-

directly for the benefits or on behalf of, and not controlled by nor a cloak for, any designated enemy country or national thereof;

4. Finding that on November 4, 1942 the Federal Reserve Bank of New York, by direction and on behalf of the Secretary of the Treasury, and pursuant to License No. NY 428596-BE, granted to said Edgar Ausnit the status of a generally licensed national, the issuance of which license had the effect of unblocking all of his personal accounts; and that at all times since November 4, 1942 said license has been and still is in full force and effect;

5. Determining that had all of the facts hereinbefore recited in subparagraph 3 been known by the undersigned, and had all of the facts hereinbefore recited in subparagraph 4 existed, on July 2, 1942, the undersigned would not have included in such vesting order any of such capital stock;

6. Determining, therefore, that the aforesaid vesting was under mistakes of fact;

7. Having received no other claim (except the one hereinbefore mentioned in subparagraph 2), or notice of claim, on Form APC-1 or otherwise, to any interest in any or all of such capital stock, or arising as a result of such vesting order; and having no knowledge of any interest in such capital stock held by any national (except the aforesaid Edgar Ausnit) of any foreign country;

8. Having neither assigned, transferred or conveyed such capital stock or any part thereof or any interest therein to anyone, nor issued any license with respect thereto, nor in any manner created therein any right or interest in any person whatsoever;

9. Determining that the error committed in vesting such capital stock should be corrected by a return thereof, and that such disposition of the aforesaid claim of Edgar Ausnit, being for the purpose of correcting a mistake made in vesting such capital stock originally, does not require any further hearing;

10. Having made all determinations and taken all action required by law; and

11. Deeming it necessary and proper in the national interest;

hereby orders that all of the aforesaid capital stock be returned to said Edgar Ausnit.

Now, therefore, the undersigned hereby assigns, transfers, conveys and quits claims to Edgar Ausnit of 46 East 61st Street, New York, New York, all right, title, interest and estate which the undersigned acquired pursuant to Vesting Order Number 46 of July 2, 1942 in and to that certain property described as follows:

a. All of the capital stock of Cisatlantic Corporation, a New York corporation; and
b. All of the capital stock of Cisocleanic Corporation, a New York corporation;

the intention of this conveyance being to return to said Edgar Ausnit all property and interest in said capital stock which the undersigned took from him pursuant to said Vesting Order Number 46, without, however, warranting what such property and interest are.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of said Executive Order.

Executed at Washington, D. C. on April 19, 1943.

[SEAL] LEO T. CROWLEY,
Alien Property Custodian.

[F. R. Doc. 43-6153; Filed, April 20, 1943;
11:04 a. m.]

[Vesting Order 1061]

FRIEDRICH WILHELM HERZOG

Re: Real properties situated in McIntosh County, North Dakota, and certain bank accounts, owned by Friedrich Wilhelm Herzog.

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation:

1. Finding that Friedrich Wilhelm Herzog is a citizen of Germany, whose last known address is Schenkenschanz, Bei Kieve, Rheinland, Germany, and is a national of a designated enemy country (Germany);

2. Finding that said Friedrich Wilhelm Herzog is the owner of the property hereinafter described in subparagraph 3;

3. Finding, therefore, that the property described as follows:

a. All right, title, interest and estate, both legal and equitable, of Friedrich Wilhelm Herzog, in and to:

(i) Real property situated in McIntosh County, North Dakota, particularly described as the South East Quarter (SE $\frac{1}{4}$) of Section Twenty One (21) and the North East Quarter (NE $\frac{1}{4}$) of Section Twenty Eight (28) all in Township One Hundred Thirty Two (132) North, of Range Seventy One (71) West of the 5th P. M. containing Three Hundred Twenty (320) acres more or less according to the U. S. Government Survey thereof, together with all fixtures, improvements and appurtenances to such property, and

(ii) Real property situated in McIntosh County, North Dakota, and particularly described as Lots Seven (7), Eight (8) and Nine (9) of Block Fifteen (15) in the City of Ashley, together with all fixtures, improvements and appurtenances to such property,

together with any and all claims of Friedrich Wilhelm Herzog for rents, refunds, benefits or other payments arising from the ownership of such properties;

b. All right, title, interest and claim of any name or nature whatsoever of Friedrich Wilhelm Herzog in and to all obligations, contingent or otherwise and whether or not matured, owing to him by McIntosh County Bank, Ashley, North Dakota, including but not limited to all security rights in and to any and all collateral for any or all such obligations and the right to sue for and collect such obligations, and including particularly:

(i) The account in said bank held in the name of Rev. F. W. Herzog and due and owing to, and held for, Friedrich Wilhelm Herzog, and

(ii) The account in said bank held in the name of Christ. Dockter, Agent for F. W. Herzog and due and owing to, and held for, Friedrich Wilhelm Herzog,

is property within the United States owned or controlled by a national of a designated enemy country (Germany);

4. Determining that the property described in subparagraph 3-b hereof is necessary for the maintenance or safeguarding of other property (namely that hereinbefore described in subparagraph 3-a) belonging to the same national of the same designated enemy country and subject to vesting (and in fact vested by this order) pursuant to Section 2 of said Executive Order;

5. Determining that to the extent that such national is a person not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of the aforesaid designated enemy country (Germany);

6. Having made all determinations and taken all action, after appropriate consul-

tation and certification, required by said Executive Order or Act or otherwise; and

7. Deeming it necessary in the national interest;

hereby vests in the Alien Property Custodian the property described in subparagraph 3 hereof, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

Such property, and any or all of the proceeds thereof, shall be held in an appropriate special account or accounts, pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return should be made or such compensation should be paid.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of said Executive Order.

Executed at Washington, D. C., on March 12, 1943.

[SEAL] LEO T. CROWLEY,
Alien Property Custodian.

[F. R. Doc. 43-6154; Filed, April 20, 1943;
11:04 a. m.]

[Vesting Order 1089]

JOSEPH AND EMMA ROHMER

Re: Real and personal property owned by Joseph Rohmer and Emma Rohmer.

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation:

1. Finding that Joseph Rohmer and Emma Rohmer, his wife, are citizens of the United States residing at 19 Ekkebertstr, Littenweiler, Freiburg, Baden, Germany, and are nationals of a designated enemy country (Germany);

2. Finding that said Joseph Rohmer and Emma Rohmer, his wife, are the owners of the real property described in subparagraph 4 hereof;

3. Finding that said Joseph Rohmer is the owner of the property described in subparagraph 5 hereof;

4. Finding, therefore, that the property described as follows:

All right, title, interest and estate, both legal and equitable, of Joseph Rohmer and Emma Rohmer, his wife, and each of them, in and to the real property situated at 113-25 200th Street, St. Albans, New York, more particularly described in Exhibit A attached hereto

and by reference made a part hereof, together with all the fixtures, improvements and appurtenances thereto, and any and all claims of Joseph Rohmer and Emma Rohmer, and each of them, for rents, refunds, benefits or other payments arising from the ownership of such property,

is property within the United States owned or controlled by nationals of a designated enemy country (Germany);

5. Finding, therefore, that the property described as follows:

a. All right, title, interest and estate, both legal and equitable, of Joseph Rohmer, in and to an undivided one-half interest in the real properties situated at 106, 106 $\frac{1}{2}$ and 108 Douglass Street, Brooklyn, New York, more particularly described in Exhibit B attached hereto and by reference made a part hereof, together with all the fixtures, improvements and appurtenances thereto, and any and all claims of Joseph Rohmer for rents, refunds, benefits or other payments arising from the ownership of such properties,

b. All right, title, interest, estate and claim of any name or nature whatsoever, of Joseph Rohmer in and to any and all obligations, contingent or otherwise and whether or not matured, which are secured by certain tax liens, evidenced by tax lien certificates Nos. 61714, 61715 and 61716, on the lot and improvements owned by Joseph Rohmer and Oscar Jacobs, located at 106, 106 $\frac{1}{2}$ and 108 Douglass Street, Brooklyn, New York and more particularly described in said Exhibit B, including but not limited to any and all collateral (including the aforesaid tax liens) for any or all such obligations and the right to enforce and collect such obligations, and

c. All right, title, interest and claim of any name or nature whatsoever of Joseph Rohmer in and to any and all obligations, contingent or otherwise and whether or not matured, owing to Joseph Rohmer by, and represented on the books of, Richter and Kalsler, Inc., 186 Remsen Street, Brooklyn, New York, as a credit due Joseph Rohmer, including but not limited to all security rights in and to any and all collateral for any or all such obligations and the right to sue for and collect such obligations, is property within the United States owned or controlled by a national of a designated enemy country (Germany);

6. Determining that the property described in subparagraphs 5-b and 5-c hereof is necessary for the maintenance or safeguarding of the interests in other property (namely, that hereinbefore described in subparagraphs 4 and 5-a) of the same national of the same designated enemy country and subject to vesting (and in fact vested by this order) pursuant to Section 2 of said Executive Order;

7. Determining that to the extent that such nationals are persons not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of the aforesaid designated enemy country (Germany);

8. Having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order or Act or otherwise; and

9. Deeming it necessary in the national interest;

hereby (i) vests in the Alien Property Custodian the property described in subparagraphs 4 and 5 hereof, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States, and (ii) undertakes the direction, management, supervision and control to the extent deemed necessary or advisable from time to time by the undersigned of the real properties situated at 106, 106 $\frac{1}{2}$ and 108 Douglass Street, Brooklyn, New

York, referred to in subparagraph 5a hereof.

Such property, and any or all of the proceeds thereof, shall be held in an appropriate special account or accounts, pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to vary the extent of such direction, management, supervision or control or to terminate the same, if and when it should be determined that any of such action should be taken.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in Section 10 of said Executive Order.

Executed at Washington, D. C., on March 22, 1943.

[SEAL]

LEO T. CROWLEY,
Alien Property Custodian.

EXHIBIT A

All that lot or parcel of land lying or being in the Fourth Ward, Borough and County of Queens, City and State of New York, described as follows:

Beginning at a point on the easterly side of 200th Street, distant Two hundred eighteen and 5/10 (218.5) feet southerly from the corner formed by the intersection of the easterly side of 200th Street, with the southerly side of 113th Avenue, running thence easterly at right angles to 200th Street, One hundred (100) feet; thence southerly parallel with 200th Street, Thirty-one (31) feet; running thence westerly at right angles to 200th Street, One hundred (100) feet; to the easterly side of 200th Street, and thence northerly along the easterly side of 200th Street, Thirty-one (31) feet; to the point or place of beginning.

Together with all the right, title and interest of the party of the first part of, in and to the land lying in the bed of 200th Street in front of and adjoining said premises to the centre line thereof.

EXHIBIT B

All that lot or parcel of land lying or being in the Borough of Brooklyn, County of Kings, City and State of New York, described as follows:

Beginning at a point on the southerly side of Douglas Street distant 114' 8" westerly from the corner formed by the intersection of the southerly side of Douglas Street with the westerly line of Hoyt Street, running thence southerly and parallel with Hoyt Street and partly through a party wall there standing 70 feet; thence, westerly 45 feet; thence, northwesterly parallel with Hoyt Street, partly through a party wall there standing 70 feet to the southerly side of Douglas Street, thence, easterly along the southerly side of Douglas Street 45 feet to the point or place of beginning.

NOTE: "Douglas" Street and "Douglass" Street are the same.

[F. R. Doc. 43-6155; Filed, April 20, 1943;
11:04 a. m.]

[Vesting Order 1090]

FLORENCE BECCADELLI DI BOLOGNA

Re: Real property situated in Edgewater Park, New Jersey, and claim, held in trust by Florence Beccadelli di Bologna (Princess di Camporeale), as Trustee for Alexander Kingsland and Anna Beccadelli di Bologna (Princess di Castelcicala).

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation:

1. Finding that Florence Beccadelli di Bologna (Princess di Camporeale), Alexander Kingsland and Anna Beccadelli di Bologna (Princess di Castelcicala), are citizens of Italy whose last known addresses are 24 via Paganini, Rome, Italy, and are nationals of a designated enemy country (Italy);

2. Finding that the property described in subparagraph 3 hereof is held by Florence Beccadelli di Bologna (Princess di Camporeale) as Trustee for Alexander Kingsland and Anna Beccadelli di Bologna (Princess di Castelcicala);

3. Finding, therefore, that the property described as follows:

a. All right, title, interest and estate, both legal and equitable, of Florence Beccadelli di Bologna (Princess di Camporeale), Trustee, Alexander Kingsland and Anna Beccadelli di Bologna (Princess di Castelcicala), and each of them, in and to the real property situated in Edgewater Park, Township and County of Burlington, State of New Jersey, more particularly designated in the tax map of the Township of Burlington as Lot No. Five (5) in Block No. Five (5) on Park Avenue, Edgewater Park, New Jersey, together with all the fixtures, improvements and appurtenances thereto, and any and all claims of Florence Beccadelli di Bologna (Princess di Camporeale), Trustee, Alexander Kingsland, and Anna Beccadelli di Bologna (Princess di Castelcicala), and each of them, for rents, refunds, benefits or other payments arising from the ownership of such property;

b. All right, title, interest and claim of any name or nature whatsoever, of Florence Beccadelli di Bologna (Princess di Camporeale), Trustee, Alexander Kingsland and Anna Beccadelli di Bologna (Princess di Castelcicala), and each of them, in and to any and all obligations (contingent or otherwise and whether or not matured) owing to them, or any of them, and held to their credit, by William H. Carey, 15 Exchange Place, Jersey City, New Jersey, in excess of the sum of \$427.10 alleged to be due and payable to the said William H. Carey for advances and expenses paid by him in connection with the property described in subparagraph 3-a hereof, including but not limited to all security rights in and to any and all collateral for any or all such obligations and the right to sue for and collect such obligations, is property within the United States owned or controlled by nationals of a designated enemy country (Italy);

4. Determining that the property described in subparagraph 3-b hereof is necessary for the maintenance or safeguarding of other property (namely, that hereinbefore described in subparagraph 3-a) belonging to the same nationals of the same designated

enemy country and subject to vesting (and in fact vested by this order) pursuant to Section 2 of said Executive Order;

5. Determining that to the extent that such nationals are persons not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of the aforesaid designated enemy country (Italy);

6. Having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order or Act or otherwise; and

7. Deeming it necessary in the national interest;

hereby vests in the Alien Property Custodian the property described in subparagraph 3 hereof, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

Such property, and any or all of the proceeds thereof, shall be held in an appropriate special account or accounts, pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return should be made or such compensation should be paid.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of said Executive Order.

Executed at Washington, D. C., on March 22, 1943.

[SEAL]

LEO T. CROWLEY,
Alien Property Custodian.

[F. R. Doc. 43-6156; Filed, April 20, 1943;
11:03 a. m.]

[Vesting Order 1175]

CONTINENTAL CERAMICS CORPORATION

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation:

1. Finding that Philip Rosenthal, Wilhelm Rosenthal and Udo Rosenthal (hereinafter referred to as the Rosenthal family) whose last known addresses are Germany, are nationals of a designated enemy country (Germany);

2. Finding that Rosenthal Porzellanfabrik of Selb, Bavaria, Germany is a national of a designated enemy country (Germany);

3. Finding that A. G. fur Keramische Unternehmungen is a corporation organized and existing under the laws of Switzerland, whose

last known address is Zug, Switzerland, and is owned or controlled by, or acting for or on behalf of or as a cloak for, Rosenthal Porzellanfabrik and/or the members of the Rosenthal family of Germany and, therefore, is a national of a designated enemy country (Germany);

4. Finding that 6,500 shares of \$10 par value common capital stock of Continental Ceramics Corporation, a New York corporation, New York, New York, are registered in the name of and owned by A. G. fur Keramische Unternehmungen;

5. Finding that Continental Ceramics Corporation is a business enterprise within the United States and that said 6,500 shares constitute all of its outstanding capital stock and are evidence of ownership and control thereof;

6. Determining that Continental Ceramics Corporation is controlled by or acting for or on behalf of or as a cloak for said Rosenthal Porzellanfabrik and/or the members of the Rosenthal family of Germany and, therefore, is a national of a designated enemy country (Germany);

7. Determining that to the extent that such nationals are persons not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of the aforesaid designated enemy country (Germany);

8. Having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order or Act or otherwise; and

9. Deeming it necessary in the national interest;

hereby (i) vests in the Alien Property Custodian the shares of stock described in subparagraph 4 hereof, to be held, used, administered, liquidated, sold or otherwise dealt with in the interests of and for the benefit of the United States, and (ii) undertakes the direction, management, supervision and control of such business enterprise to the extent deemed necessary or advisable from time to time by the undersigned.

Such property, and any or all of the proceeds thereof, shall be held in an appropriate special account or accounts, pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof or to indicate that compensation will not be paid in lieu thereof, or to vary the extent of such direction, management, supervision or control or to terminate the same, if and when it should be determined that any of such action should be taken.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim.

The terms "national", "designated enemy country" and "business enterprise within the United States" as used herein shall have the meanings prescribed in section 10 of said Executive Order.

Executed at Washington, D. C., March 31, 1943.

[SEAL] LEO T. CROWLEY,
Alien Property Custodian.

[F. R. Doc. 43-6157; Filed, April 20, 1943;
11:03 a. m.]

[Vesting Order 1177]

VADASZTOLTENY GYUTACS ES FERMARUGYAR,
R. T.

Re: Two negotiable delivery receipts for a total of 551,155 pounds of lead owned by Vadasztolteny Gyutacs es Fermarugyar, R. T.

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation:

1. Finding that Vadasztolteny Gyutacs es Fermarugyar, R. T., Budapest, Hungary, is a corporation organized under the laws of Hungary and is a national of a designated enemy country (Hungary);

2. Finding that the property hereinafter described in subparagraph 3 is owned by the aforesaid Vadasztolteny Gyutacs es Fermarugyar, R. T.;

3. Finding, therefore, that the property held by Chase National Bank and described as follows:

a. Certificate No. 641 issued by American Smelting & Refining Company to Mineralia Metal & Oil Corporation, or order, dated September 20, 1940, entitling the holder to the delivery of 220,462 pounds of pig lead in bond, on or after September 30, 1940 upon surrender of such certificate, F. O. B. seller's refinery, Monterrey, Mexico, with delivery paid to f. a. s. Galveston, Texas, and

b. Certificate No. 642 issued by American Smelting & Refining Company to Mineralia Metal & Ore Corporation, or order, dated September 20, 1940, entitling the holder to the delivery of 330,693 pounds of pig lead in bond, on or after September 20, 1940 upon surrender of such certificate, F. O. B. seller's refinery, Monterrey, Mexico, with delivery paid to f. a. s. Galveston, Texas.

is property within the United States owned by a national of a designated enemy country (Hungary);

4. Determining that to the extent that such national is a person not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of the aforesaid designated enemy country (Hungary);

5. Having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order or Act or otherwise; and

6. Deeming it necessary in the national interest;

hereby vests in the Alien Property Custodian the property hereinbefore described in subparagraph 3 hereof, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

Such property, and any or all of the proceeds thereof, shall be held in an appropriate special account or accounts, pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return should

be made or such compensation should be paid.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of said Executive Order.

Executed at Washington, D. C., on April 2, 1943.

[SEAL] LEO T. CROWLEY,
Alien Property Custodian.

[F. R. Doc. 43-6158; Filed, April 20, 1943;
11:03 a. m.]

[Vesting Order 1179]

CLARA STOECKLER

Re: A purchase money mortgage on real property, and non-interest bearing promissory note, owned by Clara Stoeckler.

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation:

1. Finding that Clara Stoeckler is a resident and citizen of Germany whose last known address is Kirchen Bezirk Eningen A/D Wurtenberg, Germany, and is a national of a designated enemy country (Germany);

2. Finding that said Clara Stoeckler is the owner of the property described in subparagraph 3 hereof;

3. Finding that the property described as follows:

All right, title, interest, estate and claim of any name or nature whatsoever of Clara Stoeckler in and to any and all obligations, contingent or otherwise and whether or not matured,

a. Which are secured by a purchase money mortgage, dated June 10, 1937 and recorded in the Office of the Register of Hudson County in Book 1788 of Mortgages, Page 553, on the lots and improvements owned by Julius Stoeckler and Anna Stoeckler, his wife, and situated at 1716-18-20 New York Avenue, Union City, New Jersey, including, but not limited to, all security rights, in and to any and all collateral (including the aforesaid mortgage) for any or all of such obligations and the right to enforce and collect such obligations, and the right to the possession of any note or bond evidencing such obligations; and

b. Which are owing to her by Julius Stoeckler, including, but not limited to, all security rights in and to any and all collateral for any or all of such obligations and the right to enforce and collect such obligations, and including particularly but not limited to that certain obligation evidenced by a non-interest bearing promissory note in the principal amount of \$500 payable to Clara Stoeckler by Julius Stoeckler, and the right to the possession of said note,

is property within the United States owned or controlled by a national of a designated enemy country (Germany);

4. Determining that the property described in subparagraph 3-b hereof is necessary for the maintenance or safeguarding of other property (namely, that hereinbefore described in subparagraph 3-a) belonging to the same national of the same designated enemy country and subject to vesting (and in fact vested by this order) pursuant to Section 2 of said Executive Order;

5. Determining that to the extent that such national is a person not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of the aforesaid designated enemy country (Germany);

6. Having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order or Act or otherwise; and

7. Deeming it necessary in the national interest;

hereby vests in the Alien Property Custodian the property described in subparagraph 3 hereof, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

Such property, and any or all of the proceeds thereof, shall be held in an appropriate special account or accounts, pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return should be made or such compensation should be paid.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year, from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of said Executive Order.

Executed at Washington, D. C., on April 2, 1943.

[SEAL] LEO T. CROWLEY,
Alien Property Custodian.

[F. R. Doc. 43-6159; Filed, April 20, 1943;
11:03 a. m.]

OFFICE OF DEFENSE TRANSPORTATION.

[Supplementary Order ODT 3, Revised-19]

COORDINATED OPERATIONS BETWEEN INDIANAPOLIS AND LAFAYETTE, INDIANA

THE SILVER FLEET MOTOR EXPRESS, INC.,
ET AL.

Upon consideration of applications for authority to coordinate operations as common carriers by motor vehicle in the transportation of property between Indianapolis and Lafayette, Indiana, and intermediate points, filed with the Office

of Defense Transportation by The Silver Fleet Motor Express, Inc., of Louisville, Kentucky, Kenneth G. Foster, doing business as (and hereinafter referred to as) Foster Freight Lines, of Indianapolis, Indiana, Commercial Motor Freight, Inc. of Indiana, of Columbus, Ohio, Lafayette-Indianapolis Transit Co., Inc., of Indianapolis, Indiana, and Charles F. Davis and Charles W. Peters, doing business as Turner Trucking Company, of Lebanon, Indiana, to facilitate compliance with requirements of General Order ODT 3, Revised, as amended, (7 F.R. 5445, 6689, 7694; 8 F.R. 4660), and

It appearing that such coordination is necessary in order to assure maximum utilization of the facilities, services and equipment, and to conserve and providently utilize vital equipment, materials and supplies, of the above named carriers, and to provide for the prompt and continuous movement of necessary traffic, the attainment of which purposes is essential to the successful prosecution of the war. *It is hereby ordered, That:*

1. The Silver Fleet Motor Express, Inc., shall suspend its service in respect of shipments moving to or from all intermediate points on its route between Indianapolis and Lafayette via Lebanon and Frankfort, Indiana.

2. Foster Freight Lines shall suspend its service in respect of shipments moving to or from Lafayette and West Lafayette, and shipments moving between Indianapolis and Lebanon, Indiana.

3. Commercial Motor Freight, Inc. of Indiana shall suspend its service in respect of shipments moving to or from all intermediate points on its route between Lebanon and Lafayette via Frankfort, Indiana.

4. Lafayette-Indianapolis Transit Co., Inc., shall suspend its service in respect of shipments moving between Indianapolis and Lebanon, Indiana.

5. All records of the carriers pertaining to any transportation performed pursuant to this order shall be kept available for examination and inspection at all reasonable times by accredited representatives of the Office of Defense Transportation.

6. The provisions of this order shall not be so construed or applied as to require or permit any carrier named herein to perform any transportation service, the performance of which by it is not authorized or sanctioned by law, or to render any service beyond its transportation capacity, or to alter its legal liability to any shipper.

7. Each of the carriers named in paragraphs 1 to 4, inclusive, herein shall file a copy of this order with the appropriate regulatory body or bodies having jurisdiction over any operations affected by this order, and likewise shall file, and publish in accordance with law, and continue in effect until further order, tariffs or supplements to filed tariffs, setting forth any changes in rates, charges, operations, rules, regulations and practices of the carrier which may be necessary to accord with the provisions of this order; and forthwith shall apply to such regulatory body or bodies for special permission for such tariffs or supplements to become effective on the shortest notice

lawfully permissible, but not prior to the effective date of this order.

8. Communications concerning this order should refer to "Supplementary Order ODT 3, Revised-19", and, unless otherwise directed, should be addressed to the Division of Motor Transport, Office of Defense Transportation, Washington, D. C.

9. This order shall become effective April 26, 1943, and shall remain in full force and effect until the termination of the present war shall have been duly proclaimed or until such earlier time as the Office of Defense Transportation by further order may designate.

Issued at Washington, D. C., this 19th day of April 1943.

JOSEPH B. EASTMAN,
Director,
Office of Defense Transportation.

[F. R. Doc. 43-6170; Filed, April 20, 1943;
11:52 a. m.]

RECOMMENDATION OF JOINT ACTION PLAN IN KANSAS CITY, MISSOURI-KANSAS

DELIVERY BY MOTOR VEHICLE OF FLOWERS AND RELATED ARTICLES

Pursuant to a provision of a general order issued by the Office of Defense Transportation for the purpose, among others, of conserving and providently utilizing motor vehicles and vital equipment, materials and supplies (General Order ODT 17, as amended, 7 F.R. 5678, 7694, 9623), C. T. Reinhardt & Son and 48 others, listed in Appendix A hereto, have filed with the Office of Defense Transportation for approval a joint action plan relating to the transportation and delivery by motor vehicle of flowers and related articles in the Kansas City, Missouri-Kansas Commercial Zone, as defined by the Interstate Commerce Commission in Kansas City, Mo.-Kansas City, Kans. Commercial Zone, 31 M. C. C. 5.

The participants in the plan comprise all of the retail florists in the area. Duplicate and parallel transportation services in connection with these establishments at present involve considerable waste. The plan provides that no motor vehicle used in such services will be operated more than six days in any calendar week, except in certain holiday weeks. The participants propose to eliminate wasteful operations and duplication of parallel services and to pool deliveries by transferring orders, joint use of the same truck or trucks and by delivering goods sold by each other. Several groups of the participants in addition have separately agreed to pool their delivery services; and the plan contemplates similar pooling by other groups of participants. It is estimated that operation under the plan will save approximately 150,000 truck-miles a year. Allocation of business or division of territories between or among participants is not contemplated.

It appearing that the proposed joint action plan is in conformity with General Order ODT 17, as amended, and that the effectuation thereof will accomplish substantial conservation and efficient

utilization of motor trucks and vital materials and supplies, the attainment of which purposes is essential to the successful prosecution of the war, I have approved the plan and recommend that the Chairman of the War Production Board find and certify under section 12 of Public Law No. 603, 77th Congress (56 Stat. 357), that the doing of any act or thing, or the omission to do any act or thing, by any person in compliance with said joint action plan, is requisite to the prosecution of the war.

Issued at Washington, D. C., this 19th day of April 1943.

JOSEPH B. EASTMAN,
Director, Office of Defense
Transportation.

APPENDIX A

1. C. T. Reinhardt & Son.
2. Thomas Silver.
3. Rock Flower Company.
4. A. F. Barbe Sons.
5. Miller Floral Company.
6. Chandler Landscape & Floral Company.
7. Crestwood Flowers.
8. Adolph D. Mohr.
9. Peed's Ruby Brookside Flower Shop.
10. Floralart Shop.
11. Barnes Flowers.
12. Alpha Floral Company.
13. Frank Helden.
14. Mary Hayden.
15. Mark W. Weston.
16. The Rosery Flower Shop.
17. Marion J. Johnson.
18. Rose Marie Floral Shop.
19. Malang's House of Design.
20. Clemens Florist.
21. L. C. Fields Flower Shop.
22. Stats Flower Shop.
23. Teefey's Flowers, Inc.
24. Sands Floral Company.
25. Dalton's Flowers.
26. Liesveld Flower Shop.
27. James Payne & Son.
28. Leon N. Walker Greenhouses.
29. Frank Bunyar.
30. Muehleback Flower Shop.
31. Peter B. Lapetina.
32. F. E. Keller.
33. George W. Mears.
34. George M. Adolf.
35. Mohr Bros. Florists.
36. Carl Cordes.
37. Primrose Gardens.
38. Mr. George Neibaum.
39. Ed. V. Pierce.
40. Mrs. Serrice.
41. Mrs. O. H. Carroll.
42. Mrs. Fred R. Green.
43. McCoy Greenhouse and Flower Shop.
44. Cowan's Floral Shoppe.
45. Pebley's Gardens.
46. Ellsworth Flowers.
47. Driggs Florist.
48. Tabler Flowers.
49. H. H. Bartlow & Son Florist.

[F. R. Doc. 43-6171; Filed, April 20, 1943;
11:52 a. m.]

OFFICE OF PRICE ADMINISTRATION.

[Order 16 Under Rev. MPR 125]

ARTH BRASS AND ALUMINUM CASTINGS COMPANY

ADJUSTMENT OF MAXIMUM PRICES

Order No. 16 under Revised Maximum Price Regulation No. 125—Nonferrous Castings; Docket No. 3125-33.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register and under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, Executive Order No. 9250 and § 1395.12 of Revised Maximum Price Regulation No. 125, *It is hereby ordered:*

(a) The Arth Brass and Aluminum Castings Company of Cleveland, Ohio, hereinafter referred to as "the applicant" may sell and deliver to any person and any person may buy and receive from the applicant nonferrous castings produced by the applicant the same, or of the same class, as those sold or contracted to be sold by the applicant during the period from October 1 to October 15, 1941, inclusive, and those sold, contracted to be sold or delivered by the applicant during the period from May 11, 1942 to January 31, 1943, inclusive, at the maximum prices prescribed by § 1395.3 of Revised Maximum Price Regulation No. 125: Except, that in determining the maximum prices of nonferrous castings under that section the applicant need not make the reductions required by paragraph (b) of that section.

(b) All prayers in the applicant's application for adjustment (Docket No. 3125-33) not granted herein are hereby denied.

(c) This order may be revoked or amended by the Price Administrator at any time.

This order shall become effective as of March 10, 1943.

Issued this 16th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-5958; Filed, April 16, 1943;
11:52 a. m.]

[Order 264 Under MPR 188]

EVERBEST MOP HANDLE MFG. CO.

APPROVAL OF MAXIMUM PRICES

Order No. 264 under § 1499.158 of Maximum Price Regulation No. 188—Manufacturers' Maximum Prices for Specified Building Materials and Consumers' Goods Other Than Apparel.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register and pursuant to the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, and Executive Order No. 9250, *It is ordered:*

(a) Everbest Mop Handle Mfg. Co., 4133 Third Avenue, New York, New York, may sell and deliver three new wooden mop handles manufactured by it f. o. b. factory, subject to discounts, allowances and terms no less favorable than those customarily granted by it at prices no higher than those set forth below:

	Per gross
No. 30	\$23.50
No. 35	25.00
No. 45	39.00

(b) This Order No. 264 may be revoked or amended by the Price Administrator at any time.

(c) Unless the context otherwise requires, the definitions set forth in § 1499.20 of the General Maximum Price Regulation shall apply to the terms used herein.

This Order No. 264 shall become effective on the 17th day of April 1943.

Issued this 16th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-5956; Filed, April 16, 1943;
11:53 a. m.]

[Order 3 Under MPR 33]

BIBB MFG. CO., ET AL.

ORDER GRANTING ADJUSTMENT

Order No. 3 under Maximum Price Regulation No. 33—Carded Cotton Yarn and the Processing Thereof.

Granting adjustment to:

Applicants	Docket Nos.
Bibb Manufacturing Company, Ma- con, Georgia	3033-15
Long Shoals Cotton Mills, Inc., Lin- colnton, N. C.	3033-14
Textiles-Incorporated, Gastonia, N. C.	3033-18
Cleveland Mill & Power Company, Lawndale, N. C.	3033-16
Gossett Mills, Anderson, South Car- olina	3033-6

For the reasons set forth in the opinion issued simultaneously herewith and filed with the Division of the Federal Register, *It is ordered*, That the maximum prices for certain carded yarns sold by the above-captioned companies, herein-after called the applicants, shall be the prices for such yarns as set forth below:

(a) The applicants may sell and deliver and any person may purchase and receive from the applicants the respective yarns indicated below at prices not in excess of the applicable maximum prices set forth in Maximum Price Regulation No. 33 plus the respective premiums indicated below:

Company	Yarn No.	Specifications	Premium (cents per pound)	Premium allowable on deliveries made on and after—
Gossett Mills, Anderson, S. C.	26s, 30s	When made of 1½" staple	3.32	Oct. 26, 1942
Bibb Manufacturing Co., Macon, Ga.	12s	When made of strict middling cotton—1½" to 1½" staple	4.95	Feb. 5, 1943
Long Shoals Cotton Mills, Inc., Lin- colnton, N. C.	36s, 40s	When made of 1½" staple	.28	Jan. 16, 1943
Textiles, Incorporated, Gastonia, N. C.	10s	When made of 1½" staple	11.10	Feb. 22, 1943
Cleveland Mill & Power Co., Lawn- dale, N. C.	8s, 10s, 12s	When made of 1½" staple	1.65	Dec. 18, 1942
		When made of 1½" staple	1.16	
		When made of 1½" staple		

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(b) The provisions of Maximum Price Regulation No. 33, except as modified by paragraph (a) above, shall apply to all sales of such carded yarns by the applicants.

(c) All prayers of the petitions not granted herein are denied.

(d) This Order No. 3 may be revoked or amended at any time by the Office of Price Administration.

(e) This Order No. 3 shall become effective April 21, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6139; Filed, April 20, 1943;
10:27 a. m.]

[Order 7 Under MPR 74]

SWIFT AND CO.

APPROVAL OF MAXIMUM PRICES

Order No. 7 under § 1363.62 (a) (5) (ii) of Maximum Price Regulation No. 74, as amended—Animal Product Feeding-stuff.

For the reasons set forth in an opinion issued simultaneously herewith and pursuant to the provisions of § 1363.62 (a) (5) (ii) of Maximum Price Regulation No. 74, as amended, *It is hereby ordered:*

(a) Approval of maximum prices for sales of meat and bone scraps containing 48 per cent protein. Swift and Company, Ft. Worth, Texas and San Antonio, Texas, may sell and deliver and any person may buy and receive from Swift and Company, meat and bone scraps containing 48 per cent protein at a maximum price not to exceed \$65.58 per ton, f. o. b. production plant, located in Zone 4 at Ft. Worth, Texas and San Antonio, Texas.

(b) Price adjustments where actual analysis differs from guaranteed minimum protein content. In any sale made pursuant to the provisions of this order, if the actual analysis differs from the guaranteed minimum percentage of protein permitted by this order, the following shall apply.

(1) If the protein content is above the guaranteed minimum percentage of protein, no increase in the maximum price is permitted.

(2) If the protein content is one per cent or less below the guaranteed minimum percentage of protein, deduct \$1.50 per ton from the selling price.

(3) If the protein content is more than one per cent below the guaranteed minimum percentage of protein deduct from the selling price \$1.50 per ton for the first one per cent and \$3.00 per ton for each additional per cent or fraction thereof.

(c) Notification of maximum prices. Swift and Company shall provide the following notice of maximum price established by this order with the first delivery to each buyer of meat scraps having a guaranteed minimum protein of 48 per cent.

The Office of Price Administration has permitted us to sell meat and bone scraps with a guaranteed minimum protein content of 48 per cent at a maximum price of \$65.58 per ton, f. o. b. our production plant, Ft. Worth, Texas and San Antonio, Texas, which is in line with the maximum prices established for the product by Maximum Price Regulation No. 74, as amended. The Office of Price Administration has not permitted you or any other seller to raise maximum prices for sales of meat and bone scraps.

(d) This Order No. 7 may be revoked or amended by the Price Administrator at any time.

This Order No. 7 shall become effective April 21, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6126; Filed, April 20, 1943;
10:31 a. m.]

[Order 20 Under MPR 136]

CHRYSLER CORPORATION

APPROVAL OF MAXIMUM PRICES

Order No. 20 under Maximum Price Regulation No. 136, as amended—Machinery and Parts, and Machinery Services.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register, and pursuant to and under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, Executive Order No. 9250, § 1390.25a (a) of Maximum Price Regulation No. 136, as amended, and Revised Procedural Regulation No. 1, *It is hereby ordered:*

(a) Chrysler Corporation, of Detroit, Michigan, is hereby authorized to sell the following marine engines at prices not in excess of the maximum prices set opposite each engine listed below:

	Model No.	Stand- ard ro- tation	Oppo- site ro- tation
CROWN MARINE ENGINE			
Reverse gear		\$388.00	\$394.00
Reduction gear	1.43	433.00	440.00
Reduction gear	1.95	438.00	445.00
Reduction gear	2.56	449.00	456.00
Reduction gear	3.46	481.00	487.00
Reduction gear "V" type	4.91	588.00	594.00
Reduction gear "V" type	1.43	512.00	519.00
Reduction gear "V" type	2.05	513.00	519.00
ROYAL MARINE ENGINE			
Reverse gear		510.00	513.00
Reduction gear	4.48	716.00	718.00
ACE MARINE ENGINE			
Reduction gear	1.95	382.00	-----

(b) Dealers of Chrysler Corporation are hereby authorized to increase their prices for the marine engines listed in paragraph (a) by an amount equal to the dollar amount of increase for each marine engine granted to Chrysler Corporation in paragraph (a).

(c) Chrysler Corporation shall notify each person to whom it sells the marine engines listed in paragraph (a) of the increase of their maximum prices made by paragraph (a) by sending him a copy of paragraphs (a) and (b).

(d) This order may be revoked or amended by the Office of Price Administration at any time.

This order shall become effective April 21, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871; E.O. 9328, 8 F.R. 4681)

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6136; Filed, April 20, 1943;
10:27 a. m.]

[Order 21 Under MPR 136]

COLE'S MACHINE TOOL & DIF SHOP

AUTHORIZATION OF MAXIMUM CHARGE FOR SERVICES

Order No. 21 under Maximum Price Regulation No. 136, as amended—Machinery and Parts, and Machinery Services; Docket No. 3136-245.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register and pursuant to and under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, Executive Order No. 9250, § 1390.25a (b) of Maximum Price Regulation No. 136, as amended, and Revised Procedural Regulation No. 1, *It is hereby ordered:*

(a) Cole's Machine Tool & Die Shop of Mansfield, Ohio, is hereby authorized to charge \$2.75 per hour for machinery services it performs in the manufacture of tools, dies, jigs, and fixtures.

(b) The issuance of this order shall not in any way affect or relieve the liability of Cole's Machine Tool & Die Shop for any violation of any regulation or order issued by the Office of Price Administration.

(c) This order may be revoked or amended by the Office of Price Administration at any time.

This order shall become effective April 21, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871; E.O. 9328, 8 F.R. 4681)

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6133; Filed, April 20, 1943;
10:30 a. m.]

[Order 22 Under MPR 136]

HAYWARD TESTING SERVICE

APPROVAL OF MAXIMUM PRICES

Order No. 22 under Maximum Price Regulation No. 136, as amended—Machinery and Parts, and Machinery Services; Docket No. 3136-232.

For the reasons set forth in an opinion issued simultaneously herewith and filed

with the Division of the Federal Register, and pursuant to and under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, Executive Order No. 9250, § 1390.25a (a) of Maximum Price Regulation 136, as amended, and Revised Procedural Regulation No. 1, *It is hereby ordered:*

(a) Hayward Testing Service of Long Beach, California is hereby authorized to sell any of the following Hayward Cement Collars used in oil wells at prices not in excess of the maximum prices set opposite each size listed below:

Casing size:	Maximum prices
4 3/4"	\$312.50
5"	315.00
5 1/2"	317.50
5 3/4"	320.00
6"	325.00
6 5/8"	330.00
7"	335.00
7 5/8"	350.00
8 5/8"	355.00
9"	370.00
9 5/8"	390.00
10%"	425.00
11 1/4"	455.00
13 3/4"	490.00

Such maximum prices shall be subject to the same discounts Hayward Testing Service had in effect on October 1, 1941.

(b) This order may be revoked or amended by the Office of Price Administration at any time.

This order shall become effective April 21, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871; E.O. 9328, 8 F.R. 4681)

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6134; Filed, April 20, 1943; 10:29 a. m.]

[Order 272 Under MPR 188]

GRAPHICUT CORPORATION

APPROVAL OF MAXIMUM PRICES

Order No. 272 under § 1499.158 of Maximum Price Regulation No. 188—Manufacturers' Maximum Prices for Specified Building Materials and Consumers' Goods Other Than Apparel.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register, and pursuant to the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, and Executive Order No. 9250, *It is ordered:*

(a) Graphicut Corporation, 480 Canal Street, New York, New York, is authorized to sell and deliver its new game, designated in the application as "Junior Eureko", at prices, f. o. b. New York, New York, no higher than those set forth below:

	Each
For jobbers.....	\$0.475
For retailers.....	.57

(b) This Order No. 272 may be revoked or amended by the Price Administrator at any time.

(c) This Order No. 272 shall become effective on the 21st day of April 1943.

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6135; Filed, April 20, 1943; 10:29 a. m.]

[Order 273 Under MPR 188]

BUDDY "L" WOOD PRODUCTS CORP.

APPROVAL OF MAXIMUM PRICES

Order No. 273 under § 1499.158 of Maximum Price Regulation No. 188—Manufacturers' Maximum Prices for Specified Building Materials and Consumers' Goods Other Than Apparel.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register, and pursuant to the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, and Executive Order No. 9250, *It is ordered:*

(a) Buddy "L" Wood Products Corporation, Glens Falls, New York, is authorized to sell and deliver its new wooden toys, described in its application of February 16, 1943, at prices to retailers, f. o. b. Glens Falls, New York, no higher than those set forth below:

	Dozen
No. 334 dump truck.....	\$10.20
No. 336 ladder truck.....	10.50
No. 342 Army supply truck.....	10.50
No. 343 Army gun truck.....	10.50
No. 340 commando gun.....	9.60
No. 351 jeep rough rider.....	10.80
No. 353 rough rider cannon unit.....	14.00
No. 354 jeep rough rider trailer wagon.....	14.50
No. 355 dump cart.....	15.60
No. 357 ice truck.....	15.60
No. 358 wrecking truck.....	16.80
No. 359 hook & ladder truck.....	18.00
No. 360 Army supply truck.....	17.40
No. 361 Army combat car.....	18.00
No. 362 Army truck.....	19.50
No. 363 Army transport and trailer unit.....	25.20
No. 364 Army combat car and cannon.....	21.00
No. 365 deluxe trailer timber truck.....	34.20
No. 366 deluxe trailer allied van.....	41.40
No. 367 Shell oil truck.....	39.60
No. 368 deluxe trailer hook & ladder.....	52.00

(b) This order may be revoked or amended by the Price Administrator at any time.

This order shall become effective April 21, 1943.

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6132; Filed, April 20, 1943; 10:30 a. m.]

[Order 274 Under MPR 188]

DUPLICRAPH, JR. COMPANY

APPROVAL OF MAXIMUM PRICES

Order No. 274 under § 1499.158 of Maximum Price Regulation No. 188—Manufacturers' Maximum Prices for Specified Building Materials and Consumers' Goods Other Than Apparel.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register, and pursuant to the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, and Executive Order No. 9250, *It is ordered:*

(a) Dupligraph, Jr. Company, 14-125 Merchandise Mart, 222 North Bank Drive, Chicago, Illinois, is authorized to sell and deliver its new toy product, designated in its application of February 24, 1943, as "Woodettes", at prices, f. o. b. Chicago, Illinois, no higher than those set forth below:

	Per dozen
For jobbers.....	\$12.00
For chain stores.....	12.75
For retailers.....	14.40

(b) This order may be revoked or amended by the Price Administrator at any time.

This order shall become effective April 21, 1943.

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6138; Filed, April 20, 1943; 10:27 a. m.]

[Order 275 Under MPR 188]

THE FEDERAL WASHBOARD COMPANY

APPROVAL OF MAXIMUM PRICES

Order No. 275 under § 1499.158 of Maximum Price Regulation No. 188—Manufacturers' Maximum Prices for Specified Building Materials and Consumers' Goods Other Than Apparel.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register, and pursuant to the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, and Executive Order No. 9250, *It is ordered:*

(a) The Federal Washboard Company, 75 East Jackson Street, Chicago, Illinois, is authorized to sell and deliver its new wagons, described in its application of January 29, 1943, at prices to retailers, f. o. b. Chicago, Illinois, no higher than those set forth below:

	Each
No. 6.....	\$1.80
No. 7.....	2.10

(b) This Order No. 275 may be revoked or amended by the Price Administrator at any time.

(c) This Order No. 275 shall become effective on the 21st day of April 1943.

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6131; Filed, April 20, 1943; 10:30 a. m.]

[Order 276 Under MPR 188]

DETROIT TOY COMPANY

APPROVAL OF MAXIMUM PRICES

Order No. 276 under § 1499.158 of Maximum Price Regulation No. 188—Manu-

FEDERAL REGISTER, Wednesday, April 21, 1943

facturers' Maximum Prices for Specified Building Materials and Consumers' Goods Other Than Apparel.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register, and pursuant to the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, and Executive Order No. 9250, *It is ordered:*

(a) Detroit Toy Company, 17102 Mack Avenue, Grosse Pointe, Michigan, is authorized to sell and deliver its new educational hobby toy, designated in its application of March 3, 1943, as "Paint-Pals", at prices, f. o. b. Grosse Pointe, Michigan, no higher than those set forth below:

	Triple box	Double box	Single box
To jobber.....	\$0.45	\$0.3375	\$0.225
To chain stores.....	.50	.3750	.25
To dept. stores.....	.54	.4050	.27

(b) This order may be revoked or amended by the Price Administrator at any time.

This order shall become effective April 21, 1943.

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6130; Filed, April 20, 1943;
10:30 a. m.]

[Order 277 Under MPR 188]

ROBERT B. PAYSEE COMPANY

APPROVAL OF MAXIMUM PRICES

Order No. 277 under § 1499.158 of Maximum Price Regulation No. 188—Manufacturers' Maximum Prices For Specified Building Materials And Consumers' Goods Other Than Apparel.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register, and pursuant to the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, and Executive Order No. 9250, *It is ordered:*

(a) Robert B. Paysee Company, 173 West Madison Street, Chicago, Illinois, is authorized to sell and deliver its new cartoon drawing set, described in its application of February 26, 1943, at prices, f. o. b. Chicago, Illinois, no higher than those set forth below:

	Per dozen
To jobbers.....	\$5.40
To chain stores.....	6.00
To retailers.....	7.20

(b) This order may be revoked or amended by the Price Administrator at any time.

This order shall become effective April 21, 1943.

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6129; Filed, April 20, 1943;
10:30 a. m.]

[Order 278 Under MPR 188]

VICTORY PATTERN MFG. COMPANY

APPROVAL OF MAXIMUM PRICES

Order No. 278 under § 1499.158 of maximum price regulation No. 188—Manufacturers' Maximum Prices for Specified Building Materials and Consumers' Goods Other Than Apparel.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register and pursuant to the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, and Executive Order No. 9250, *It is ordered:*

(a) Victory Pattern Manufacturing Company, 4046 West Lawrence Avenue, Chicago, Illinois, may sell and deliver to jobbers its two new mop sticks f. o. b. factory, subject to discounts, allowances and terms no less favorable than those customarily granted by it at prices no higher than those set forth below:

	Per dozen
Holder #1.....	\$1.80
Holder #2.....	2.40

(b) This Order No. 278 may be revoked or amended by the Price Administrator at any time.

(c) Unless the context otherwise requires, the definitions set forth in § 1499.20 of the General Maximum Price Regulation shall apply to the terms used herein.

This Order No. 278 shall become effective on the 21st day of April 1943.

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6128; Filed, April 20, 1943;
10:30 a. m.]

[Order 279 Under MPR 188]

RONI STUDIOS

APPROVAL OF MAXIMUM PRICES

Order No. 279 under § 1499.158 of Maximum Price Regulation No. 188—Manufacturers' Maximum Prices for Specified Building Materials and Consumers' Goods Other Than Apparel.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register, and pursuant to the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, and Executive Order No. 9250, *It is ordered:*

(a) Roni Studios, Whitestone, New York, is authorized to sell and deliver its new educational toy, designated in its application of February 26, 1943, as "Carvatoys," at prices to retailers, f. o. b. Whitestone, New York, no higher than \$1.50.

(b) This order may be revoked or amended by the Price Administrator at any time.

This order shall become effective April 21, 1943.

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6127; Filed, April 20, 1943;
10:31 a. m.]

[Order 9 Under Rev. MPR 213]

MOORE COMPANY

APPROVAL OF MAXIMUM PRICES

Order No. 9 under § 1365.61 of Revised Maximum Price Regulation No. 213—Coil and Flat Bedsprings with Non-steel Frames.

Approval of maximum f. o. b. factory, l. c. l. carload prices for the Moore Company.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register and by virtue of the authority vested in the Price Administrator under the Emergency Price Control Act of 1942, *It is hereby ordered:*

(a) The Moore Company of Muncie, Indiana, may sell and deliver its No. 8391 and No. 8592 coil bedsprings with wood frames and partial platform tops at prices no higher than \$5.90 and \$7.20 respectively, f. o. b. factory, l. c. l.

(b) Any person may sell at wholesale and deliver No. 8391 and No. 8592 coil bedsprings with partial platform tops at warehouse or delivered prices no higher than \$5.90 and \$7.20 respectively, plus the dollar amount by which such a seller's warehouse or delivered price exceeded the manufacturer's f. o. b. factory, l. c. l. price for the most comparable bedspring with a steel frame during March 1942 under the same conditions of sale.

(c) Any person may sell at retail and deliver the No. 8391 and No. 8592 bedsprings at prices no higher than \$10.25 and \$12.50 respectively plus \$0.50 each for a sale at retail in the Far West Zone.

(d) The maximum prices set forth in paragraphs (a), (b) and (c) hereof shall be subject to the same discounts, allowances, terms and differentials as the seller had in effect for the most comparable bedspring with a steel frame during March, 1942.

(e) The Moore Company shall notify in writing all persons selling at wholesale who purchase No. 8391 and No. 8592 bedsprings of the maximum prices established in paragraphs (a), (b) and (c) hereof before delivery of any such bedsprings.

(f) Before making delivery of No. 8391 and No. 8592 bedsprings with wood frames and partial platform tops, the Moore Company must attach securely to each bedspring so that it is clearly visible, a durable tag containing, in easily readable lettering, the statement in the following form:

The Office of Price Administration has established a Retail Ceiling Price of (inserting correct figure) for this bedspring. Lower prices may be charged. This tag may not be removed until after delivery to the consumer.

(g) This Order No. 9 may be revoked or amended by the Office of Price Administration at any time.

(h) Unless the context otherwise requires, the definitions set forth in Revised Maximum Price Regulation No. 213 shall apply to the terms used herein.

(i) This Order No. 9 under § 1365.61 of Revised Maximum Price Regulation

No. 213 shall become effective April 21, 1943.

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6140; Filed, April 20, 1943;
10:27 a. m.]

[Order 2 Under MPR 230]

PRODUCERS PIPE AND SUPPLY COMPANY

APPROVAL OF MAXIMUM PRICE

Order No. 2 under § 1306.460 (b) of Maximum Price Regulation 230—Reusable Iron and Steel Pipe; Docket No. 3230-6.

For the reasons set forth in the opinion issued simultaneously herewith, under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, and Executive Order No. 9250, and in accordance with Revised Procedural Regulation No. 1 issued by the Office of Price Administration: *It is hereby ordered*, That:

(a) The Producers Pipe and Supply Company, Kennedy Building, Tulsa, Oklahoma, is hereby authorized to charge the U. S. Army Engineers of Seattle, Washington, the additional sum of \$651.76 over the maximum price established by Maximum Price Regulation 230, on its contract W-869, Eng. 7736, with the U. S. Army Engineers entered into September 8, 1942.

(b) All prayers of the petitions filed by the Producers Pipe and Supply Company not specifically granted herein are denied.

This Order No. 2 shall become effective April 21, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 20th day of April 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-6137; Filed, April 20, 1943;
10:27 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

[File Nos. 37-58, 4-46]

AMERICAN WATER WORKS AND ELECTRIC CO. ET AL.

NOTICE OF FILING AND ORDER FOR HEARING AND ORDER CONSOLIDATING PROCEEDINGS

At a regular session of the Securities and Exchange Commission held at its office in the City of Philadelphia, Pennsylvania on the 12th day of April A. D., 1943.

In the matter of American Water Works and Electric Company, Incorporated, Water Works Service Company, Inc., American Water Works Construction Company, File No. 37-58; American Water Works and Electric Company, Incorporated, Atlantic County Electric Company of New Jersey, Commonwealth Water Company, The Bernards Water

Company, Monmouth Consolidated Water Company, New Jersey Water Company, Ocean County Water Company, American Water Works Construction Company, and Water Works Department, Inc., File No. 4-46.

Notice is hereby given that on April 9, 1943, American Water Works and Electric Company, Incorporated, a registered holding company, and its subsidiary companies, American Water Works Construction Company and Water Works Service Company, Inc. filed applications and declarations with this Commission pursuant to the Public Utility Holding Company Act of 1935.

All interested persons are referred to said document which is on file in the office of this Commission for a statement of the transactions therein proposed, which are summarized as follows:

Water Works Service Company, Inc. has filed a declaration with respect to its organization and conduct of business as a subsidiary service company. It proposes to furnish various services to system subsidiary operating water companies and services of a limited character to several system subsidiary non-operating companies and to American Water Works and Electric Company, Incorporated. Water Works Service Company, Inc. proposes to issue and sell 1,500 shares of common stock, par value \$100 per share, to American Water Works and Electric Company, Incorporated for \$150,000 in cash.

American Water Works Construction Company, all of whose outstanding securities are owned by American Water Works and Electric Company, Incorporated and which performs engineering services for associate water companies, will declare a liquidating dividend of all its assets and be dissolved. Among its assets to be distributed to and acquired by American Water Works and Electric Company, Incorporated, are 9,792 shares of the common stock and 132 shares of the \$6 Series First Preferred Stock of American Water Works and Electric Company, Incorporated, 574 shares of the 7% Cumulative Preferred Stock of Monongahela West Penn Public Service Company (a public utility subsidiary company of American Water Works and Electric Company, Incorporated), and \$74,500 principal amount of West Penn Traction Company First Mortgage Five Per Cent Gold Bonds which are assumed obligations of West Penn Railways Company (a registered holding company and subsidiary of American Water Works and Electric Company, Incorporated).

The declarant, Water Works Service Company, Inc., proposes to file additional information by amendment including, among other things, its proposed method of allocating its costs of doing business among associate companies, the departmental organization of the company, and the nature of the services to be performed by the various departments.

The Commission having on January 28, 1943, instituted proceedings pursuant to sections 18 (a), 18 (b), and 13 of the Public Utility Holding Company Act of 1935 in respect of the construction, sales, and service arrangements of American Water Works and Electric Company, In-

corporated, American Water Works Construction Company, and Water Works Department, Inc. with associate companies (File No. 4-46); and

The Commission having held a public hearing on February 18, 1943, for the purpose of taking evidence on the issues involved under sections 18 (a), 18 (b), and 13 of the Act, and said hearing having been adjourned to April 22, 1943; and

It appearing to the Commission that the proceeding heretofore instituted pursuant to sections 18 (a), 18 (b), and 13 (File No. 4-46) and the applications and declarations hereinbefore described (File No. 37-58) involve common questions of law and fact and should be consolidated;

It is hereby ordered, That such proceedings be and the same hereby are consolidated and that the hearings in the above entitled matters be held on April 22, 1943, at 10 o'clock in the forenoon of that day at the offices of the Securities and Exchange Commission, 18th and Locust Streets, Philadelphia, Pennsylvania. On that day the hearing-room clerk in Room 318 will inform the parties as to the exact room at which said hearing will be held.

It is further ordered, That Richard Townsend, a Trial Examiner of the Commission, or any officer or officers of the Commission designated by it for that purpose be, and he hereby is, designated to preside at such hearing. The officer so designated to preside at such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a Trial Examiner under the Commission's Rules of Practice.

It is further ordered, That jurisdiction be and hereby is reserved to separate, either for hearing, in whole or in part, or for disposition, in whole or in part, any of the issues or questions which may arise in these proceedings and to take such other action as may appear conducive to an orderly, prompt, and economic disposition of the matters involved.

It is further ordered, That any person desiring to be heard in connection with these proceedings or proposing to intervene herein shall file with the Secretary of the Commission, on or before April 20, 1943, his request or application therefor, as provided by Rule XVII of the Rules of Practice of the Commission.

It is further ordered, That the Secretary of the Commission shall serve notice of the hearings aforesaid by mailing a copy of this order to American Water Works and Electric Company, Incorporated, Water Works Service Company, Inc., American Water Works Construction Company, Atlantic County Electric Company of New Jersey, Commonwealth Water Company, The Bernards Water Company, Monmouth Consolidated Water Company, New Jersey Water Company, Ocean County Water Company, Water Works Department, Inc., the Public Utilities Commissions of the States of Iowa, New Jersey, Kansas, Indiana, West Virginia, Arkansas, Virginia, Illinois, Pennsylvania, Rhode Island, Massachusetts, Connecticut, New York, Kentucky, Ohio, Maryland, Tennessee, Missouri,

Wisconsin, and Texas not less than eight days prior to the date hereinbefore fixed as the date of the hearing; and that notice of said hearing is hereby given to American Water Works and Electric Company, Incorporated and such subsidiaries, to their security holders, and to all consumers of American Water Works and Electric Company, Incorporated and such subsidiaries, to all state municipalities and political subdivisions of states within which is located any of the physical assets of said companies or under the laws of which any of said companies are incorporated, all State Commissions, State Securities Commissions, and all agencies, authorities and instrumentalities or one or more states, municipalities, or other political subdivisions having jurisdiction over American Water Works and Electric Company, Incorporated or such subsidiaries or any of the businesses, affairs or operations of any of them, that such notice shall be given further by a general release of the Commission, distributed to the press and mailed to the mailing list for releases issued under the Public Utility Holding Company Act of 1935; and that further notice be given to all persons by publication of this Order in the **FEDERAL REGISTER** not later than seven days prior to the date hereinbefore fixed as the date of hearing.

By the Commission.

[SEAL]

ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 43-6121; Filed, April 20, 1943;
9:45 a. m.]

[File Nos. 54-39, 54-69, 59-65]

LACLEDE GAS LIGHT CO., ET AL.

NOTICE OF FILING AND ORDER FOR HEARING
AND ORDER CONSOLIDATING PROCEEDINGS

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pennsylvania, on the 19th day of April, A. D. 1943.

In the matters of the Laclede Gas Light Company, Laclede Power & Light Company, Phoenix Light, Heat and Power Company, Ogden Corporation, File No. 54-39; Ogden Corporation and Subsidiary Companies, File No. 54-69, and Ogden Corporation and Subsidiary Companies, Respondents, File No. 59-65.

Notice is hereby given that The Laclede Gas Light Company, Laclede Power & Light Company, and Phoenix Light, Heat and Power Company, subsidiaries of Ogden Corporation, a registered holding company, and Ogden Corporation have filed a plan, as amended, pursuant to section 11 (e) of the Public Utility Holding Company Act of 1935 for the purpose of effectuating the reorganization of The Laclede Gas Light Company, disposing of the electric utility assets operated by Laclede Power & Light Company to Union Electric Company of Missouri, and enabling the Ogden holding company system to comply, in part, with the provisions of section 11 (b) of the Act.

All interested persons are referred to said plan, as amended, which is on file at the office of this Commission, for a statement of the transactions proposed therein, which may be summarized as follows:

1. The transfer by The Laclede Gas Light Company ("Laclede Gas"), Phoenix Light, Heat and Power Company ("Phoenix"), and Laclede Power & Light Company ("Laclede Electric") to Union Electric Company of Missouri ("Union Electric") of the electric properties operated by Laclede Electric for a base purchase price of \$8,600,000, subject to certain adjustments for property additions and retirements, receivables, materials and supplies, and other items of a similar fluctuating nature. In connection with such sale, Laclede Electric will not exercise the option granted to it pursuant to an agreement entered into in 1926 to purchase from Laclede Gas the properties covered in said agreement, but said agreement will, as a part of the plan, be terminated concurrently with the joint transfer of the said electric properties;

Laclede Gas and Laclede Electric have entered into a contract for division of the proceeds of the sale of electric properties. Under this contract, Laclede Gas is to receive \$2,200,000 out of such proceeds;

2. The payment by Union Electric of the aforesaid base purchase price for the said electric properties in the amount of \$8,600,000, as adjusted, as follows:

(a) There shall be paid directly to Laclede Electric only such portion of the said purchase price which, when added to the cash of Laclede Electric, will be sufficient to discharge in full all the liabilities of Laclede Electric not assumed by Union Electric, as provided in the contract of sale, and to pay severance compensation to such of the employees of Laclede Electric as may not be taken over by Union Electric.

(b) There shall be paid directly to Laclede Gas all of the balance of the said purchase price, which balance will include not only the portion to which Laclede Gas is entitled (\$2,200,000), but also the portion of the said price to which Laclede Electric is entitled which remains after the payment by Union Electric to Laclede Electric of the amount provided to be so paid in sub-paragraph (a) preceding;

3. The transfer to Laclede Gas by Laclede Electric of all of its assets, except cash, remaining after the consummation of the said contract of sale of the electric properties;

4. The decrease in the par value of the outstanding shares of preferred stock and of the outstanding, as well as the authorized but unissued, shares of common stock of Laclede Gas, from a par value of \$100 per share to a par value of \$5 per share and a corresponding increase in the number of the outstanding shares of such preferred stock and of the outstanding, as well as the authorized but unissued, shares of such common stock;

5. The issuance to Ogden Corporation of 1,500,000 shares of authorized but unissued common stock of \$5 par value of Laclede Gas in return for;

(a) The cancellation of the \$2,000,000 principal amount of Notes of Laclede Gas owned by Ogden Corporation,

(b) The portion of the purchase price of said electric properties paid to Laclede Gas by Union Electric (hereinbefore provided) to which Laclede Electric is entitled, and

(c) The assets transferred by Laclede Electric to Laclede Gas, as hereinbefore described;

Of the shares so received by it, Ogden Corporation will release for delivery to all stockholders of Laclede Electric, other than Ogden Corporation, such number of shares of such common stock of Laclede Gas as this Commission shall fix as equitable and fair;

6. The cancellation of nine out of the twenty shares of preferred stock of \$5 par value, which each holder of one share of preferred stock is entitled to receive as a result of the decrease in par value of such stock and the corresponding increase in the number of shares, as described hereinbefore in paragraph 4, and the cancellation of all rights and preferences appertaining to the preferred stock, including all rights to accumulated, unpaid dividends. Such shares so cancelled will not be reissued;

The result of the foregoing will be that, upon consummation of the Plan, each holder of preferred stock of \$100 par value will receive eleven shares of common stock of \$5 par value for each share of preferred stock of \$100 par value surrendered by him;

7. The cancellation of nineteen out of the twenty shares of common stock of \$5 par value, which each holder of one share of common stock of \$100 par value is entitled to receive as a result of the decrease in par value of such stock and the corresponding increase in the number of shares, as provided hereinbefore in paragraph 4. Such shares so cancelled shall not be reissued;

The result of the foregoing will be that upon consummation of the Plan, each holder of common stock of \$100 par value will receive one share of common stock of \$5 par value for each share of common stock of \$100 par value surrendered by him;

8. The payment in cash by Laclede Gas of interest on its outstanding bonds and notes from the respective preceding interest payment dates to the effective date of the Plan;

9. The use of the portion of the said purchase price of the said electric properties which is paid to Laclede Gas by Union Electric (as hereinbefore provided) in addition to such other cash of Laclede Gas as may be necessary to retire \$7,868,000 principal amount of Refunding and Extension Mortgage 5% Gold Bonds, dated April 1, 1904, outstanding in the hands of the public;

10. The issuance by Laclede Gas of the following securities:

(a) \$20,000,000 principal amount of First Mortgage Bonds, bearing interest at the rate of 3 1/2% per annum and maturing twenty years from the date of issuance thereof.

(b) \$5,000,000 principal amount of Debentures bearing interest at the rate

of 5½% per annum and maturing ten years from the date of issuance thereof.

The proceeds from the sale of these securities will be used to discharge the balance of the outstanding funded debt of Laclede Gas by payment of the face amount of such securities to the holders thereof;

11. The result of the cancellation of shares of preferred stock and common stock of \$5 par value (as hereinbefore provided) will be to increase capital surplus on the books of Laclede Gas by approximately \$11,214,850. The increase in the property account of Laclede Gas as a result of a revaluation effected in 1926, as well as the loss on the books of Laclede Gas resulting from the said sale of the electric properties to Union Electric, will be charged to capital surplus. There will also be charged to capital surplus any other adjustments required to be made on the books of Laclede Gas by any regulatory body having jurisdiction;

12. The offer by Ogden Corporation to residents of the State of Missouri of the \$5 par value common stock of Laclede Gas, which it is entitled to receive hereunder, at a price to be subject to the approval at the time by the Securities and Exchange Commission as fair. Said offer shall be made within one year after completion of the reorganization unless such time shall be extended by this Commission;

The consummation of the Plan is subject to:

(a) The entry of an order by this Commission pursuant to section 11 (e) and to the applicable provisions of the Public Utility Holding Company Act approving such Plan.

(b) Such orders of the Public Service Commission of the State of Missouri with respect to the approval of the plan or the carrying out of any or all of the steps contemplated by the plan which may be necessary or desirable;

The plan further provides that at any time after its approval, as provided above, the Board of Directors of Laclede Gas may, if it be deemed necessary or desirable, request the Securities and Exchange Commission, pursuant to section 11 (e), to apply to a court of competent jurisdiction to carry out the terms and provisions of the plan.

It appearing to the Commission that it is appropriate in the public interest and the interest of investors and consumers that a hearing be held with respect to said plan or the plan as subsequently amended and that such plan should not be approved except pursuant to further order of this Commission;

It further appearing to the Commission that the plan filed herein by Laclede Gas, Laclede Electric, Phoenix, and Ogden Corporation (File No. 54-39) and proceedings in respect of the plan filed by Ogden Corporation and subsidiary companies pursuant to section 11 (e) of the Act (File No. 54-69) and the proceedings instituted by the Commission directed to Ogden Corporation and subsidiary companies, respondents, pursuant

ant to sections 11 (b) (1), 11 (b) (2), 15 (f), and 20 (a) of the Act (File No. 59-65), involve common questions of law and fact and should be consolidated;

It is ordered, That such proceedings be and is hereby consolidated.

It is further ordered, That hearings on such matters under the applicable provisions of the Act and the Rules promulgated thereunder, be held on the 18th day of May, 1943, at 10 a. m. in the offices of the Securities and Exchange Commission, 18th and Locust Streets, Philadelphia, Pennsylvania, in such room as may be designated at such time by the hearing room clerk in Room 318.

It is further ordered, That Edward C. Johnson, or any other officer or officers of the Commission designated by it for that purpose, shall preside at the hearings in such matters. The officer so designated to preside at any such hearing is hereby authorized to exercise all the powers granted to the Commission under section 18 (c) of the Act and to a Trial Examiner under the Commission's Rules of Practice.

It is further ordered, That, without limiting the scope of the issues presented in the consolidated proceeding, particular attention will be directed at the hearing to the following matters and questions:

(a) Whether the proposed issuance by Laclede Gas of \$25,000,000 principal amount of debt will result in an excessive amount of debt and whether the issuance of \$25,000,000 of debt is reasonably adapted to its assets, earning power, and security structure;

(b) Whether this Commission should also require as a term and condition to its approval of the Plan filed under section 11 (e) by Laclede Gas, Laclede Electric, Phoenix, and Ogden Corporation and to the issuance of the securities proposed in such Plan, the following term and condition imposed by the Public Service Commission of the State of Missouri in its order approving the Plan of Reorganization of Laclede Gas: "That any surplus upon the books of The Laclede Gas Light Company as of the date of issuance of the securities authorized herein shall be unavailable for the payment of dividends. Any earned surplus accruing subsequent to such date to the extent of \$3,000,000 shall likewise be unavailable for the payment of such dividends" and what other or additional terms and conditions in regard to restriction of dividends should be imposed;

(c) Whether Laclede Gas should be required to carry its fixed assets on its books at the estimated original cost thereof as determined by the accountants for the Public Service Commission of the State of Missouri, as of August 31, 1942, plus subsequent net additions at actual cost;

(d) Whether the write-downs in the property account of Laclede Gas proposed in the plan, as well as other write-downs which may be required by this Commission or other regulatory bodies having jurisdiction, should be charged, first, to the earned surplus account and

any remainder thereof charged to existing capital surplus and capital surplus created by the reduction in the aggregate stated value of capital stock;

(e) Whether the depreciation reserve of Laclede Gas is adequate and whether any remaining balance in capital surplus, after giving effect to all other charges for property adjustments and similar matters, should be required to be transferred to the depreciation reserve;

(f) Whether the proposed base purchase price of \$8,600,000 to be received from Union Electric for the electric properties operated by Laclede Electric is reasonable and whether the sale of such properties to Union Electric is in compliance with the provisions of section 12 (d) and other applicable provisions of the Act;

(g) Whether the proposed allocation of the proceeds of the sale of the electric properties operated by Laclede Electric between Laclede Gas and Laclede Electric is fair and equitable;

(h) Whether the proposed issuance by Laclede Gas of eleven shares of new \$5 per value common stock for each share of \$100 par value preferred stock to the present holders thereof and the proposed issuance of one share of new \$5 par value common stock for each share of \$100 par value common stock to the present holders thereof are fair and equitable to the persons affected thereby;

(i) Whether the securities and cash proposed to be received and retained by Ogden as a result of the reorganization of Laclede Gas, the sale of the electric properties operated by Laclede Electric, and the liquidation and dissolution of Laclede Electric, constitute fair and equitable consideration for Ogden's interests in Laclede Gas and Laclede Electric;

(j) To what extent, if any, the proposed Plan should be modified or amended to render it feasible and fair and equitable to the persons affected and what terms and conditions should be imposed in the public interest and for the protection of investors and consumers.

Notice is hereby given of said hearing to the above-named applicants and respondents, and to all interested persons; said notice to be given to said applicants and respondents by registered mail, and to all other persons by publication in the Federal Register. It is requested that any person desiring to be heard in this proceeding shall file with the Secretary of this Commission, on or before May 10, 1943, an appropriate request or application to be heard, as provided by Rule XVII of the Commission's Rules of Practice.

It is further ordered, That jurisdiction be and is hereby reserved to separate, whether for hearing, in whole or in part, or for disposition, in whole or in part, any of the issues, questions, or matters hereinbefore set forth or which may arise in this proceeding, or to consolidate with these proceedings other filings or matters pertaining to said Plan or to take such other action as may appear conducive

FEDERAL REGISTER, Wednesday, April 21, 1943

to an orderly, prompt, and economical disposition of the matters involved.

By the Commission.

[SEAL] ORVAL L. DUBoIS,
Secretary.

[F. R. Doc. 43-6124; Filed, April 20, 1943;
9:45 a. m.]

[File Nos. 59-54, 70-577]

KEWANEE PUBLIC SERVICE CO. AND
ILLINOIS IOWA POWER CO.

ORDER RECONVENING HEARING

At a regular session of the Securities and Exchange Commission held at its office in the City of Philadelphia, Pa., on the 17th day of April 1943.

In the matter of Kewanee Public Service Company, Respondent, File No. 59-54; and Illinois Iowa Power Company, File No. 70-577.

Illinois Iowa Power Company having filed an application or declaration (or both) pursuant to the applicable provisions of the Public Utility Holding Company Act of 1935 and the rules promulgated thereunder regarding the acquisition by said company of the publicly held preferred stock of Kewanee Public Service Company (File No. 70-577) which application or declaration (or both) was set for hearing on September 2, 1942 and subsequently continued to September 23, 1942; and

The Commission having entered an order on September 3, 1942 instituting proceedings against Kewanee Public Service Company pursuant to sections 11 (b) (2), 12 (c), 12 (f), 15 (f) and 20 (a) of the Act (File No. 59-54) a copy of which order has been mailed to the stockholders of said company; and

The Commission having by order dated September 8, 1942 consolidated the hearings on the aforesaid application or declaration (or both) and on the proceedings so instituted and set the consolidated hearing on September 23, 1942; and a consolidated hearing having been held on said date which was adjourned subject to the call of the trial examiner; and

It appearing to the Commission that it is appropriate in the public interest and in the interest of investors and consumers that a further hearing be held with respect to said proceedings;

It is ordered, That a reconvened hearing in said proceedings shall be held on the 11th day of May, 1943 at 10:00 a. m., e. w. t., at the office of the Securities and Exchange Commission, 18th and Locust Streets, Philadelphia, Pennsylvania in such room as may be designated on that date by the hearing room clerk in Room 318.

It is further ordered, That the Secretary of the Commission shall serve notice of the reconvened hearing by mailing a copy of this order by registered mail to Kewanee Public Service Company, Illinois Iowa Power Company, Illinois Traction Company, North American Light & Power Company, The North American

Company, and the Illinois Commerce Commission; and that notice of said hearing be given to all other persons by publication of this order in the FEDERAL REGISTER.

It is further ordered, That Kewanee Public Service Company mail a copy of this notice at least fifteen days prior to the date herein fixed as the date of the reconvened hearing to all of its known security holders including the Trustee under the Indenture securing its bonds and that said company mail a copy of our order of September 3, 1942 in this matter to all of its known security holders, including the Trustee under the Indenture securing its bonds, who have not previously been mailed a copy thereof;

It is further ordered, That any person desiring to be heard in connection with these proceedings or to intervene therein shall, on or before the 28th day of April 1943 file with the Secretary of the Commission his written request or application, as required by Rule XVII of the Rules of Practice of the Commission.

By the Commission.

[SEAL] ORVAL L. DUBoIS,
Secretary.

[F. R. Doc. 43-6123; Filed, April 20, 1943;
9:45 a. m.]

[File No. 70-702]

EASTERN SHORE PUBLIC SERVICE CO. (DEL.)
AND EASTERN SHORE PUBLIC SERVICE CO.
OF MARYLAND

ORDER PERMITTING DECLARATIONS TO BECOME
EFFECTIVE

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pa., on the 19th day of April 1943.

Eastern Shore Public Service Company (Delaware), a registered holding company (hereinafter called Delaware), and The Eastern Shore Public Service Company of Maryland, a subsidiary thereof (hereinafter called Maryland), having filed declarations pursuant to the Public Utility Holding Company Act of 1935, particularly section 12 thereof, and Rules U-42 and U-43 thereunder, with respect to the following transactions:

Maryland has outstanding as of February 28, 1943, \$3,692,500 principal amount of its First Mortgage 4% Bonds due September 1, 1969, all of which bonds are owned by Delaware and pledged by Delaware to secure its First Mortgage and First Lien Bonds. Maryland proposes to redeem \$100,000 principal amount of its outstanding bonds at par and accrued interest thereon, in accordance with the terms of the Indenture securing them.

The funds to be received by Delaware from Maryland will be deposited with the Trustee under the Indenture securing Delaware's First Mortgage and First Lien Bonds. In order to obtain the release of funds so deposited, Delaware then proposes to deliver to the Trustee for cancellation \$100,000 principal

amount of its First Mortgage and First Lien Bonds, Series C, 5%, due September 1, 1946, now pledged as collateral security to its 3% note payable to The Chase National Bank of the City of New York, upon which note there is an unpaid balance of \$450,000. Delaware will apply the \$100,000 it will receive to reduce the amount due on the bank loan.

Said declarations having been filed on April 8, 1943, and notice of said filing having been duly given in the form and manner prescribed by Rule U-23 promulgated pursuant to said Act, and the Commission not having received a request for a hearing with respect to the declarations within the period specified in said notice, or otherwise, and not having ordered a hearing thereon; and

The above-named parties having requested that said declarations be permitted to become effective before April 20, 1943; and

The Commission deeming it appropriate in the public interest and in the interest of investors and consumers to permit the declarations pursuant to Rules U-42 and U-43 to become effective, and being satisfied that the effective date of such declarations should be advanced;

It is hereby ordered, Pursuant to Rule U-23 and the applicable provisions of said Act, and subject to the terms and conditions prescribed in Rule U-24, that the aforesaid declarations be, and hereby are, permitted to become effective forthwith.

By the Commission.

[SEAL] ORVAL L. DUBoIS,
Secretary.

[F. R. Doc. 43-6122; Filed, April 20, 1943;
9:45 a. m.]

WAR PRODUCTION BOARD.

[Certificate 53]

COORDINATED OPERATIONS BETWEEN INDIANAPOLIS AND LAFAYETTE, INDIANA

THE SILVER FLEET MOTOR EXPRESS, INC., ET AL.

The Attorney General: I submit here-with Supplementary Order ODT 3, Revised-19,¹ issued by the Director of the Office of Defense Transportation with respect to coordinating the operations of common carriers of property by motor vehicle between Indianapolis and Lafayette, Indiana, and intermediate points.

For the purposes of section 12 of Public Law No. 603, 77th Congress (56 Stat. 357), I approve said order; and after consultation with you, I hereby find and so certify to you that the doing of any act or thing, or the omission to do any act or thing, by any person in compliance with Supplementary Order ODT 3, Revised-19, is requisite to the prosecution of the war.

Dated: April 19, 1943.

DONALD M. NELSON,
Chairman.

[F. R. Doc. 43-6168; Filed, April 20, 1943;
11:52 a. m.]

¹Supra.

RECOMMENDATION OF JOINT ACTION PLAN
IN KANSAS CITY, MISSOURI-KANSASDELIVERY BY MOTOR VEHICLE OF FLOWERS
AND RELATED ARTICLES

[Certificate 54]

The Attorney General: I submit here-with a Recommendation of the Director of the Office of Defense Transportation of a plan for joint action by the persons

named therein with respect to the transportation and delivery by motor vehicle of flowers and related articles in the Kansas City, Missouri-Kansas Commercial Zone.¹

For the purposes of section 12 of Public Law No. 603, 77th Congress (56 Stat. 357), I approve the joint action plan as described in the recommendation; and after consultation with you, I hereby

¹ *Supra.*

find and so certify to you that the doing of any act or thing, or the omission to do any act or thing, by any person in compliance with such joint action plan is requisite to the prosecution of the war.

Dated April 19, 1943.

DONALD M. NELSON,
Chairman.

[F. R. Doc. 43-6169; Filed, April 20, 1943;
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